NICK KOTZ ON HAROLD HUGHES

MAY 1970

The Washington Monthly

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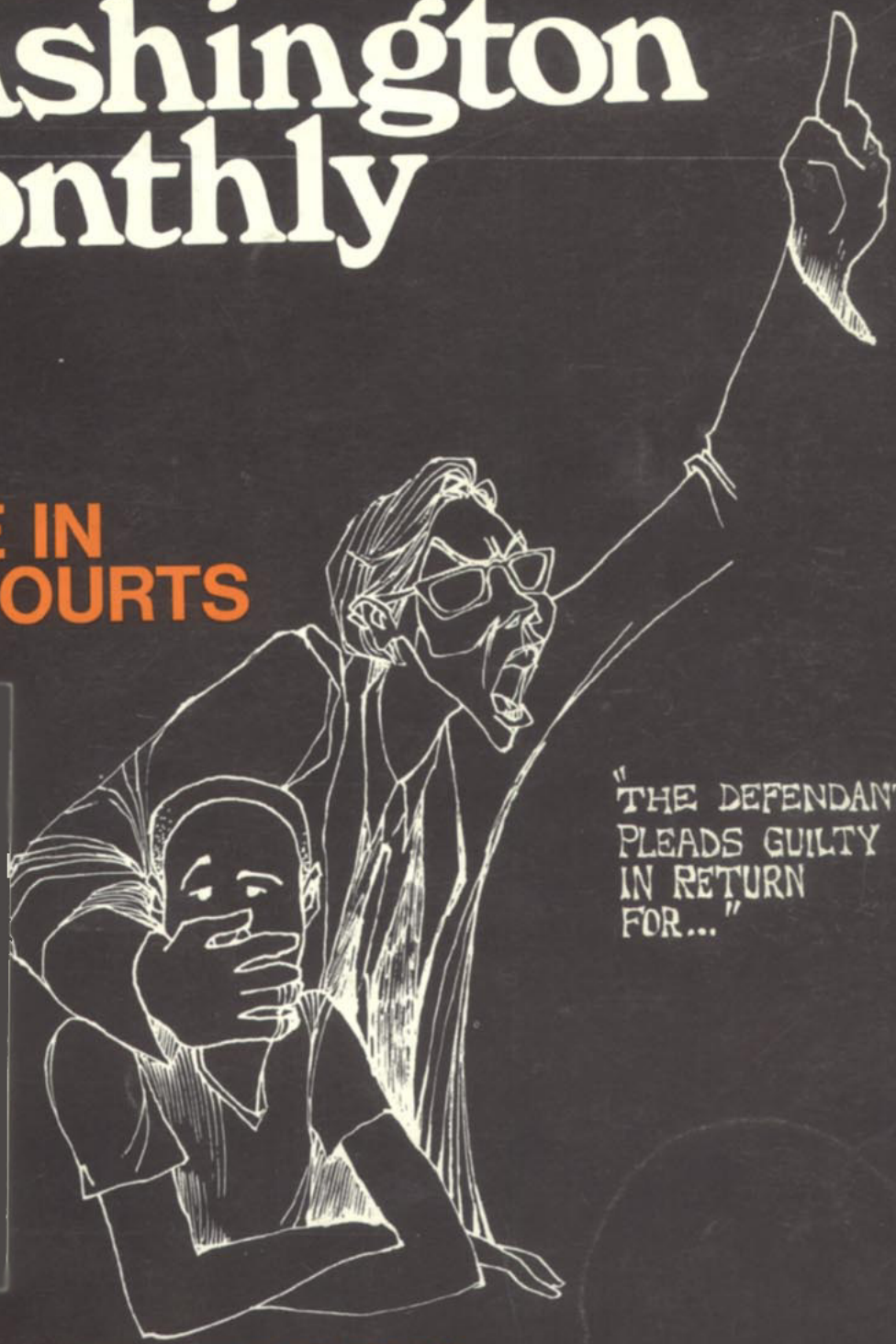

THE CIA AND THE SECRET TEAM

AN END TO DEMEANING WORK

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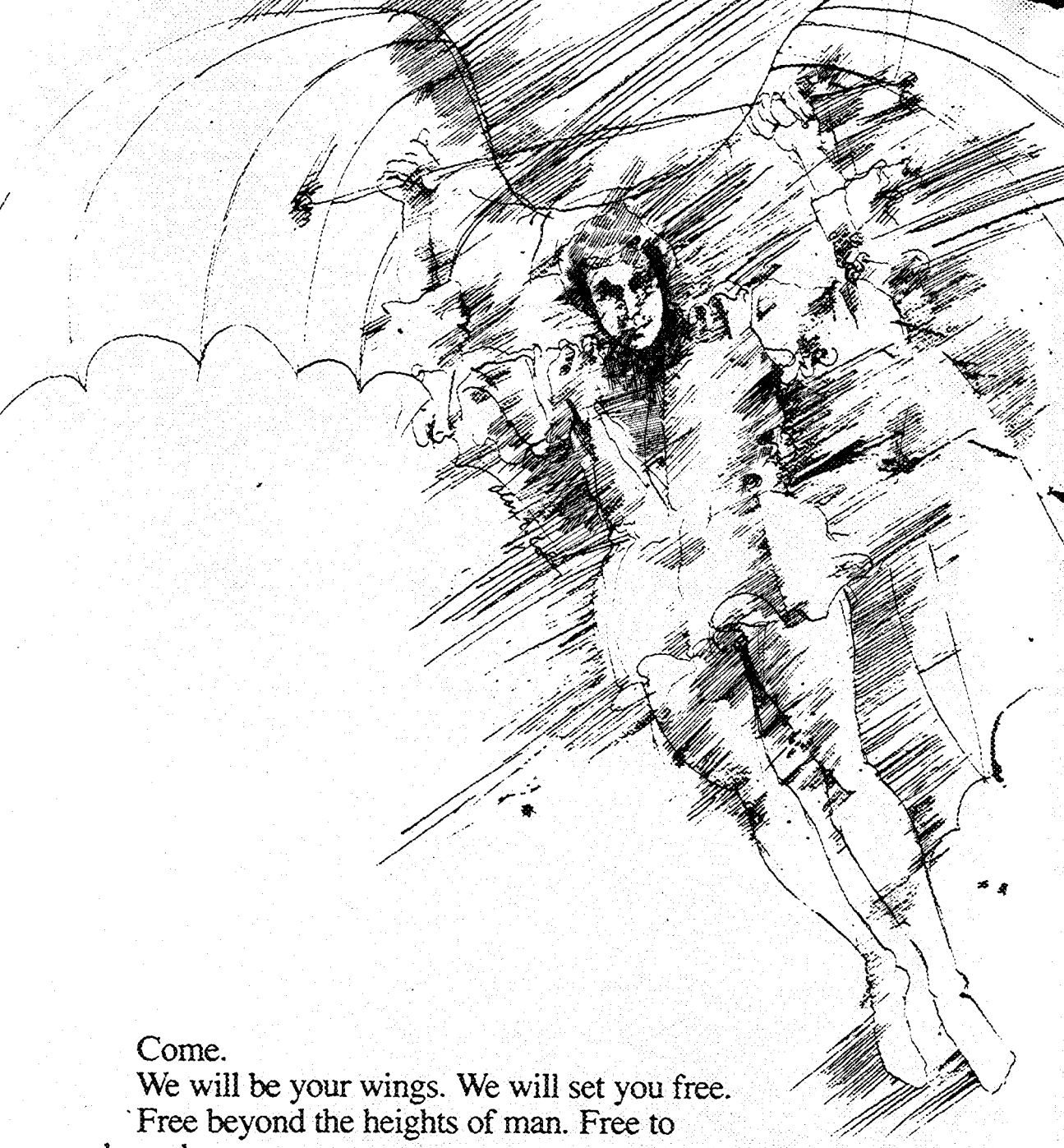

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Beyond Welfare Reform

by David Hapgood

When Richard Nixon and Wilbur Mills, plus most of the business and labor establishments, are for an idea, then clearly it is time to look beyond that idea into the future.

So it is with the Administration's national family assistance plan. As this is written, it seems virtually certain that the plan offered by Nixon and approved, with some changes, by Chairman Wilbur Mills (D-Ark.) and his House Ways and Means Committee will pass Congress this year. The Nixon plan, though modest in its virtues—its defects, indeed, are what make it acceptable to both Congress and its author—is both the most important change in our times in the American poor law and the first step toward the radical goal of a guaranteed income for all.

On the face of it, and in the minds of its sponsors, guaranteed income is a way to end poverty in America: making sure that no one's income falls below whatever is decided to be the tolerable minimum. That much is obvious and obviously desirable. But guaranteed income can do much more than abolish poverty. It can liberate the majority of Americans who are not poor from the tyranny of work that is demeaning, oppressive or trivial. Attitudes toward work will be shaken up among the well-to-do and the poor alike, among employers as well as employees. Work will not be abolished, but society will have to find ways to make work more attractive. If there is a floor under everyone's income, the worst jobs will find no takers. The present pattern—the lousier the job, the poorer the pay—will be reversed: unpleasant tasks will command the higher salaries. Pleasant jobs will pay less.

Despite conservative forebodings, society would gain from this revolution. Today there is a huge waste in work done in sullen indifference. Dull work on factory or office assembly lines—tighten

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David Hapgood is a senior editor of The Washington Monthly.

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that bolt, type that memo—is sloppily performed. Service people, whose work is intrinsically interesting, are managed by society into resentment and poor productivity; the cop sleeps in the patrol car, the teacher and nurse are indifferent to their charges. If society were forced by guaranteed income to make these jobs attractive, the quality of work would improve dramatically, to the benefit of all.

Once there is a safety net under us, we will become more willing to take risks with our careers. The bureaucrat who now hesitates to criticize is more likely to speak out if the cost of courage—being fired—is reduced by having a guaranteed income. The man under intense pressure who would like to change the direction of his life, described by Dr. Robert N. Butler ("The Burnt-Out and the Bored," *The Washington Monthly*, September, 1969), will now be able to make a change without risking poverty. This man, as Dr. Butler describes him, is caught in a lock step from the time he leaves school until he is abruptly discarded at retirement. The pressure of society prevents him from taking time off to change careers or just to enjoy some recreation; often it is hard for him even to change jobs without paying a penalty. After years of that kind of living, he goes stale and cannot either enjoy life or do his best work. Under guaranteed income, he would at least be able to make a change in his life's pattern without paying as high a price as he would now.

The Protestant Ethic would be buried along with other artifacts of the industrial revolution. The notion that work is an ennobling pastime is a fairly recent hypocrisy. Despite the theological overtones of the work ethic, the Book of Genesis makes it clear that God had nothing but punishment in mind when he sentenced Adam to work; before the Fall, in fact, Adam had been on guaranteed income. Until this century, every-

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one was frank about what made people work: the threat of starvation. In the hideous early days of Britain's industrial revolution, employers knew perfectly well why people worked; the "lower orders," they said, had to be kept in a condition of want to make them toil. The stick has always been considered more effective, at any rate cheaper, than the carrot. It is not surprising, then, that many employers fear that any kind of guaranteed income would discourage people from working. Paradoxically, they are joined in their opposition to "putting able-bodied loafers on welfare" by a lot of Middle Americans who, mired in dreary, low-paid jobs, are along with the poor themselves those who would most benefit from guaranteed income.

The Administration's proposal is no more than a small first step. The income it would provide, $1,600 for a family of four, is indecently low, it is hedged around with fierce work requirements, and the benefits are concentrated in the states of the Southern Strategy. Even that much, however, seemed impossible only a few months ago. As recently as January, the Administration's plan seemed dead for this year at least: the President was showing no interest in pushing his own idea, liberals objected that the plan was too small and Nixon's besides, and everyone else seemed indifferent. A skillful lobbying effort and a temporary truce among the various welfare reformers combined to show Congress that the plan had a public constituency. The Urban Coalition Action Council was able, for example, to get the signatures of more than 80 corporation executives on a statement favoring the House bill, and the National Association of Manufacturers, once hostile, was now friendly to the idea. The AFL-CIO, like the NAM, shifted from against to favorable. The vital center of establishment opinion had shifted in the past couple of years, leaving in opposition to welfare reform mostly the far right (plus, one suspects, a good deal of the Silent Majority, proving that silence is only a virtue when your man in the White House already agrees with the opinions you are not expressing). Congressmen got the message that the accusation that they were voting to support able-bodied loafers and illegitimate black children would come not so much from corporate constituents but from angry Middle Americans without much clout.

The reform constituency supported family assistance as a means of putting an end to a welfare system whose bankruptcy was so evident that it embarrassed even those who operate it. That does not mean that a large-scale guaranteed income plan could win all of the same constituency. Yet the act of ending the welfare system and putting a national floor under the income of all American families will, inevitably, clear the way for the consideration of much more revolutionary ideas.

Guaranteed income and income maintenance are terms that cover a cluster of ideas that have been put in circulation in the last few years. The authors of these ideas have in common the belief that the best way to end poverty is to supply poor people with money. "The chief characteristic of the poor is that they lack money," Robert Theobald observed, and what he meant was that the poor could not be defined as "ignorant," "lazy," "untrained," etc. That may sound reasonably obvious today, but it runs counter to the assumptions of our poor law. Under the New Deal, when most of our poor law was written, work was the normal antidote to poverty. Social Security and unemployment compensation both operate on the assumption that their recipients have spent, or will spend, most of their lives at work. Only public assistance (welfare) is for people of working age who cannot work, and only under welfare are people treated as subnormal as well as poor. Something more than lack of money is wrong with people on welfare, hence they alone are singled out for that demeaning treatment—intensive investigation, invasion of privacy, enforced social services—that has made welfare administration so repulsive. The New

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Deal assumptions persisted until today. The War on Poverty did not propose to give money directly to the poor, but to train and motivate them to go to work. The unions have supported increasing the minimum wage rather than giving money to the poor. And until now no one gave any thought to giving money to the working poor: those who work full time and still cannot make it. In advocating money for the poor rather than services, the guaranteed income advocates reflect the current skepticism about the ability of government to solve social problems by paternalistic action.

Schemes for guaranteed income come in several varieties, differing in boldness and in technique, and with names that are remarkably ugly.

"Demogrant" is the name of the simplest and most sweeping scheme, under which everyone regardless of income would receive a fixed annual amount from the government. We would each get, let us say, $750 a year, and we would pay taxes on all income above that. This would remedy the obvious injustice of the personal exemption which, like most aspects of our present tax system, mainly benefits the well-to-do. If you are in the 50 per cent tax bracket, a $600 personal exemption is worth $300; if you are in a 20 per cent bracket, it's only worth $120, and, if you have no income, the exemption is worth zero. The demogrant would be the same for everyone. The main objection to the demogrant is that most of the money would go to people who do not need it; setting it high enough to eliminate poverty would be impossibly expensive.

Partial demogrants involve giving money to everyone in one part of the population—children or the elderly, for example. The children's allowance plans of most European nations give a fixed amount to all families with children, regardless of need. Again, the cost in the U.S. would be heavy and most of the money would go to people who do not need it; nor does it seem sensible to discriminate in favor of families with children. If a means test is added, the cost goes down.

"Negative income tax" is currently the most popular proposal. A term like that could only have been coined by an economist: he is Milton Friedman of Chicago, a 20th century conservative (or 19th century liberal), who has been an adviser to Barry Goldwater and now Nixon. Unlike the demogrant, the negative tax is restricted to the needy. The name comes from the idea that there should be a break-even point in income below which you receive rather than pay taxes—semantically, paying a negative tax means receiving positive cash. The versions of the negative tax range in their minimum income, for a family of four, from Nixon's $1,600 to the $5,500 proposed by the National Welfare Rights Organization. The Heineman Commission on Income Maintenance Programs recommended $2,400 to start, rising to $3,600 as soon as possible.

But the negative tax alone is not enough. It is obviously unfair to pay $3,000—if that is the minimum—to one family and nothing to the family that makes $3,001. That would destroy any incentive to work at jobs paying near the minimum. In practice, that was the effect of welfare, which until recently took away 100 per cent of any money a welfare recipient earned if he was unlucky enough to get caught. All the negative tax proposals provide for letting people receiving benefits keep a portion of any earnings they may have. Deciding how much they keep creates a dilemma. If the tax on earnings is low, the incentive to work is increased—and so is the cost of the plan. If the tax is high, the cost is held down—but the incentive to work is less. (Or so at least everyone assumes, although in fact there is no real evidence that tax rates influence how much people choose to work.)

This is how a negative tax would work with a minimum income of $3,000 and a tax rate of 50 per cent. If you earn nothing, you get the $3,000. If you earn $1,000, your benefits are reduced by 50 per cent of your earnings, or $500: your

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total income is $3,500 ($1,000 earnings plus $2,500 benefits). You will continue to get some benefits until your income reaches $6,000, at which point 50 per cent of your earnings cancels out your benefit of $3,000. After that break-even point, you enter the regular tax system, or, as we shall soon have to call it, the "positive" tax system. Under a 50 per cent tax plan, therefore, the benefits reach people now earning up to twice the minimum guaranteed income: an important political fact for those trying to organize a constituency for the plan.

Nixon's proposal is basically a negative income plan, but is restricted to families with children. It taxes earnings at a rate of 50 per cent.

The guaranteed income plans all are based on the assumption that poor people are like other people except that they have less money. Most are designed to be administered as part of the tax system. That is, you make a declaration of lack of income to the Internal Revenue, and this is accepted subject to the kind of spot-checking IRS does on all tax returns. That is practical as well as humane: the evidence is that welfare's insulting and expensive investigation produces more cheating than the IRS methods. Most of the guaranteed income planners also would like to tie their proposals to reform of the income tax structure, because any conceivable guaranteed income plan would spotlight the sins of the present tax structure. If "taxable income" were the criterion for getting negative tax payments, for example, the people now hiding out in our many tax shelters—oil or tax-exempt bonds or whatever—would qualify for payments, and we would be confronted with a class of rich welfare chiselers. But if we deny payments to the shelter-dwellers, how can we justify the inconsistencies between the two tax systems?

To explore the long-range implications of guaranteed income we can take off from one specific plan, that of the National Welfare Rights Organization, which proposes an income of $5,500 for a family of four, with a two-thirds tax on earnings. The floor is based on the Labor Department's calculation of the minimum income needed for "the maintenance of health and social well-being." (The official poverty line of $3,335 measures relative desperation, and Nixon's $1,600 might be an appropriate goal for, say, Portugal.) The break-even point, at which you switch over to the regular tax system, would be at about $9,500. Since the break-even point is close to the median income, the plan would provide some benefits for almost everyone whose income is below the middle. The greatest benefit, of course, would go to the 50 million people below the $5,500 floor. (All the figures are for a family of four.)

The Welfare Rights proposal would immediately eliminate poverty and would narrow the range of inequality in America. Although we think of our social structure as being shaped like a pyramid, it looks more like a diamond, with minorities at the top and bottom, and the great majority clustered around the middle. The guaranteed income of $5,500 would eliminate the bottom part of the diamond, now occupied by the poor. Since the floor would be tied to the median income, all Americans would be guaranteed at least half the median standard of living. If it is true that people feel poor not by any absolute standard but in relation to the income of others, then relative poverty would be limited at its worst to having half the median income.

The cost of this ambitious undertaking is difficult even to guess at, but there is good reason to think it would ultimately cost much less than the estimates now being circulated by both friend and foe. Jon Kaufman of the Welfare Rights Organization threw out $50 billion as the amount of new payments that would be made under their plan. But that is admittedly only a guess, if only because no one knows what kinds of ripples would be made by tossing that big a rock into the American economy.

What is certain is that much, if not most, of that $50 billion would be offset

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by short-run savings and long-term benefits. In the short run, much of today's $40 billion in transfer payments—money taxed from some people and given to others—could be eliminated. Welfare and unemployment compensation, which together account for more than $8 billion, could go right away. Ultimately we could also dispense with social security, another $25 billion a year. Although social security is billed as a pension plan, in fact it is a tax imposed on those now working and their employers to pay pensions to retired workers. Guaranteed income would make superfluous any compulsory pension plan like social security; optional pension arrangements could be provided those who want more than the guaranteed income after they retire.

That's only the beginning. We could, with guaranteed income, rapidly dismantle the awkward bureaucracies that have been built up to provide in-kind services to the poor. If there are no poor, no in-kind services are needed, and no bureaucracies to administer those services. Food-stamp and commodity programs, $1 billion, would go. Public housing, about $750 million, would be unnecessary. (Another, perhaps more important saving on housing would be that guaranteed income would greatly reduce the rate at which sound apartments are being abandoned in cities: poverty is the root cause of that abandonment, which is draining off more housing than is being built by government subsidy.) Government-financed medical care that now totals close to $10 billion—Medicare, Medicaid, veterans' care—could be discontinued, though perhaps not entirely, since medical care is the one aspect of a decent living that is out of reach of people at the guaranteed income proposed by the Welfare Rights Organization. Farm subsidies (about $5 billion a year) could be abolished, although Senator Eastland (D-Miss.) could justifiably argue that the farm programs subsidize rich farmers, not poor ones, and therefore should not be discontinued just because no one is poor any longer down on the farm.

The elimination of in-kind services is particularly attractive because it involves a net saving to society, not just a transfer to the consumer of costs now paid by government. Any time government decides what people need, a great deal of waste occurs, since free choice is more efficient than any administrative determination of what people should have. Government usually does a poor job of applying those decisions to the individual, and people often abuse what is free, or resent it as demeaning. The Heineman Commission concluded that "the encroachment on individual choice wrought by many of our current in-kind programs contributes to their ineffectiveness." Less than half of those eligible for food stamps, for example, actually are able and willing to use them; and public housing is at least one-quarter more expensive—besides being less suited to the tenants—than similar housing built for the private market. Abolishing the bureaucracies that administer these programs would also improve the muscle tone of government by making it smaller.

We would save the social costs of poverty. If those who are now poor are raised to whatever floor is set, we have every right to expect that they will reduce their production of crime and other social disorders to the level of those who now get what will become the minimum income. Some are skeptical that the behavior of *those people* can be improved by a rise in income; but in 19th century New York reformers despaired of the future of the brawling, dirty, criminal, diseased immigrants who have become today's impeccably middle-class Irish and Jews.

To my knowledge, no one has estimated how much might be saved, but a couple of examples will suggest how much is at stake. In Sacramento, the ghetto contains 20 per cent of the population and pays 12 per cent of the city's taxes; it produces 36 per cent of the city's fires, 42 per cent of the adult crime, 76 per cent of the tuberculosis cases, and uses 50 per cent of health and

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41 per cent of police costs. Or take the contrast between the city of St. Louis, with many poor, and St. Louis County, where median income is 40 per cent higher. In 1966, the city had to spend $34 per capita on health while the county spent $8; for police it was $32 versus $10, and for fire, $13 versus $6. City residents paid $254 per capita in taxes and were less well served than the suburbanites who paid only $153. Projecting these figures across the nation—and remembering that social pathology affects the quality of life as well as the tax rate—we can see what could be gained by the absence of poverty.

How the non-poor would respond to guaranteed income is hard even to speculate about. No one has any real idea how people's decisions about work would be influenced by the knowledge that the alternative to a job need not be poverty. Would there be a stampede of people leaving work for leisure, probably causing the collapse of the whole system? Many Americans seem to believe that other people—especially those of a class different from theirs—would rather loaf on a minimum income than work for higher pay. Others believe the Protestant Ethic has such a hold on us that we will work no matter what.

One bit of evidence comes from the experiment being conducted for the Office of Economic Opportunity by Mathematica, a Princeton, New Jersey, research firm. Since 1968, Mathematica has been testing a total of eight income maintenance plans on some 650 families in New Jersey and Pennsylvania. The families are guaranteed a given amount for the three years of the test whether they work or not. Early indications are that neither the guarantee, nor the tax on earnings, which ranges from 30 to 70 per cent, seems to affect decisions to work; in fact, the work earnings of families in the experiment have risen slightly more than those of people in a control group who are getting no guaranteed income. How much this means is questionable, since the people know they are part of an experiment and that the guarantee is only for three years; they might well behave differently if guaranteed income were universal. (The Mathematica experiment has produced two other pieces of information about guaranteed income: poor people have no more than the normal amount of trouble doing the paperwork involved in reporting their income at regular intervals; and administering the plan costs $75-90 a year per family, compared to the welfare administrative cost of $200-300.)

The impact of guaranteed income is likely to be greatest on those jobs that now pay near the minimum that people would get without working. If those jobs are trivial, or can be done by machines, they are likely to disappear for lack of takers. But many essential jobs are in that income range: policemen, sanitation men, teachers, mailmen. These are jobs that combine low pay with frequently unpleasant working conditions. Under guaranteed income, it is questionable whether people would stay in those jobs unless society succeeds in making the work attractive, not just in pay, but in those intangibles that can make "going to work" important and interesting—or an ordeal. If people don't have to work in order to survive, they won't accept demeaning treatment. The challenge of guaranteed income is that employers, and in a larger sense all of us, will have to be more humane in our treatment of human beings.

Freedom, then, is the ultimate promise of guaranteed income: freedom to enjoy the work we do, freedom to take the risk of being fired, freedom to drop out and drop back in again. Abbie Hoffman is one of the few people who understands that affluent, technological America can afford a revolution in its attitudes toward work. "You hate the work you do, but you don't have to live like this," he told a television audience the other night. The studio audience howled back in anger at the notion that Abbie Hoffman, of all people, should be offering them liberation. But of course Abbie was right. We really don't have to live this way. ■

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The Secret Team and the Games They Play

by L. Fletcher Prouty

"The hill costumes of the Meo tribesmen contrasted with the civilian clothes of United States military men riding in open jeeps and carrying M-16 rifles and pistols. These young Americans are mostly ex-Green Berets, hired on CIA contract to advise and train Laotian troops." Those matter-of-fact, almost weary sentences, written late in February by T.D. Allman of *The Washington Post* after he and two other enterprising correspondents left a guided tour and walked 12 miles over some hills in Laos to a secret base at Long Cheng, describe a situation that today may seem commonplace to anyone familiar with American operations overseas, but that no more than 10 years ago would have been unthinkable.

To take a detachment of regular troops, put its members into disguise, smuggle them out of the country so that neither the public nor the Congress knows they have left, and assign them to clandestine duties on foreign soil under the command of a non-military agency —it is doubtful that anyone would have dared to suggest taking such liberties with the armed forces and foreign relations of the United States, not to say with the Constitution, to any President up to and especially including Dwight D. Eisenhower. Indeed, the most remarkable development in the management of America's relations with other countries during the nine years since Mr. Eisenhower left office has been the assumption of more and more control over military and diplomatic operations abroad by men whose activities are secret, whose budget is secret, whose very identities as often as not are secret—in short a Secret Team whose actions only those implicated in them are in a position to monitor. How determinedly this secrecy is preserved, even when preserving it means denying the United States Army the right to discipline its own personnel, not to say the opportunity to do justice, was strikingly illustrated not long ago by the refusal of the Central Intelligence Agency to provide witnesses for the court-martial that was to try eight Green Beret officers for murdering a suspected North Vietnamese spy, thus forcing the Army to drop the charges.

The Secret Team consists of security-cleared individuals in and out of government who receive secret intelligence data gathered by the CIA and the National Security Agency and who react to those

L. Fletcher Prouty, a retired Air Force colonel, is now a Washington banker.

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data when it seems appropriate to them with paramilitary plans and activities, e.g., training and "advising"—a not exactly impenetrable euphemism for "leading into battle"—Laotian troops. Membership in the Team, granted on a "need to know" basis, varies with the nature and the location of the problems that come to its attention. At the heart of the Team, of course, are a handful of top executives of the CIA and of the National Security Council, most notably the chief White House adviser on foreign policy. Around them revolves a sort of inner ring of Presidential staff members, State Department officials, civilians and military men from the Pentagon, and career professionals in the intelligence services. And out beyond them is an extensive and intricate network of government officials with responsibility for or expertise in some specific field that touches on national security: think-tank analysts, businessmen who travel a lot or whose businesses (e.g., import-export or operating a cargo airline) are useful, academic experts in this or that technical subject or geographic region, and, quite importantly, alumni of the intelligence service—a service from which there are no unconditional resignations.

Thus the Secret Team is not a clandestine super-planning board or super-general staff but, even more damaging to the coherent conduct of foreign affairs, a bewildering collection of temporarily assembled action committees that respond pretty much ad hoc to specific troubles in various parts of the world, sometimes in ways that duplicate the activities of regular American missions, sometimes in ways that undermine those activities, and very often in ways that interfere with and muddle them. For example, when serious border troubles broke out along the northern frontiers of India, Pakistan, Nepal, and Bhutan in 1962, the CIA brought in U.S. military equipment and manpower, including Special Forces (Green Beret) troops, to train Indian police, despite the fact that the Joint Chiefs of Staff had already sent to New Delhi for the same purpose a special team headed by General Paul Adams, founder and commanding general of the U.S. Strike Command. The CIA operators practically ignored General Adams and Ambassador John Kenneth Galbraith in proceeding with their plans, and there is no evidence that the U.S. Congress ever knew the CIA was in the picture at all.

One source of the Team's power is the speed with which it can act. The CIA's communications system is so extraordinarily efficient, especially by contrast with State's, that the Team can, in a phrase that often gets used at such times, "have a plane in the air" responding to some situation overseas while State is still decoding the cable informing it of that situation. A few years ago, for example, while the strongest member of an Asian government that the United States was strenuously supporting (call him Marshal X) was lying sick in a Tokyo hospital, word came that a group of discontented young officers was planning a coup in his absence. In a matter of hours, thanks to the Team, Marshal X was on his way home in a U.S. Air Force jet fighter; he arrived at his office in plenty of time to frustrate the plotters. The power to pull off feats like that is more than operational power; it is in a real sense policy-making power. In this particular case it was the power to commit the United States to the protection and support of Marshal X, even though many officials who dealt with Marshal X's government on a workaday basis regarded him as the most obnoxious member of it. Calling back "a plane in the air" is not an easy thing to do, and the Team knows and benefits from this fact.

Another source of the Team's power is its ability to manipulate "need to know" classifications. One way to make sure that there is little opposition to your proposed activities is to fail to tell those who might oppose them what those activities are; even men with high-ranking policy-making jobs and the

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appropriate Top Secret clearances often are kept in the dark about Team plans. Thus Adlai Stevenson, ambassador to the United Nations, was not informed about the Bay of Pigs invasion plans until the very last minute when rumors about it began to appear in the press; and even then Tracy Barnes, the CIA man sent to brief Stevenson, gave him a vague and incomplete picture of the operation.

"Need to know" also can be bent in the other direction in order to secure the support of potential allies and further those allies' careers. Members of the Secret Team who favored the election of John F. Kennedy over Richard Nixon played a very special role in the 1960 election campaign. Nixon presided over the National Security Council and therefore knew in detail the plans for the Bay of Pigs operation. Senator Kennedy, as an outsider, was presumed not to know those highly classified details. However, he did know. In his book, *Six Crises,* Nixon wrote that Kennedy was told about the invasion by Allen Dulles during the traditional CIA briefing for candidates; but there was more than that to the story, it appears.

A former staff member from the Office of the Secretary of Defense recollects that during the summer of 1960 he went to the Senate Office Building to pick up and escort to the Pentagon four Cuban exile leaders, among them the future commander of the Bay of Pigs invasion team, who had been meeting with Senator Kennedy. Those men were supposed to be under special security wraps, but certain CIA officials had introduced them to Kennedy, thus making sure that he knew as much about the invasion as Nixon—if not more, as the result of a personal relationship that Nixon did not have with the Cuban refugee front and the Americans who were secretly helping it. When the candidates appeared on television together during the crucial campaign debates, Nixon, abiding by security restrictions, limited himself in his discussion of the government's plans for Cuba. This official control did not apply to Kennedy. He could and did ad-

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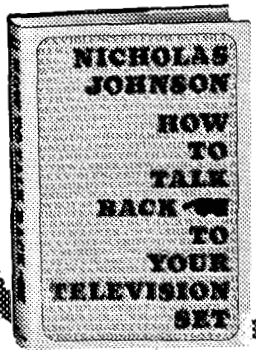

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vocate overthrowing the Castro government. Nixon's frustration and anger at Kennedy's tactics were evident on the TV screen. Many observers believe that that confrontation over Cuba was one of the moments during the debates when Kennedy scored most heavily—and of course most observers credit Kennedy's performance during the debates with his narrow victory in the election.

That Kennedy's connection with the Cuban refugees before his election was anything but casual or fortuitous was demonstrated more than two years later in the Orange Bowl in Miami, before a national television audience, at a welcome-back celebration for the ransomed prisoners from the Bay of Pigs. At one point during the ceremonies, the President walked over to the group of returnees and threw his arm around the shoulders of one of them. If those watching thought he had chosen his man at random, they were mistaken. The Cuban he embraced was his old friend from the summer of 1960, Manuel Artime, the commander of the invasion brigade.

Kennedy's election was a big boost for Secret Teamwork, but an earlier and bigger one had been the appointment of Allen Dulles as Director of the CIA in 1953, after two years as Deputy Director. At that time the agency was not permitted by the National Security Council to build up a big enough force of men and materiel to permit it to carry out operations on its own. In other words, whenever the CIA wanted to do anything on a large scale, it had to secure assistance from, and therefore share authority with, other agencies, chiefly the Departments of State and Defense. Slowly Dulles changed these conditions. One way he did it was to give intelligence activities intellectual and social credibility by surrounding himself with men from industry, finance, and academia.

The CIA always had been a haven for Ivy League people and Dulles made it even more so. It was not unusual to find the Director, perched on a hassock in his living room, wearing a V-neck sweater and tennis shoes, with a racquet on the floor beside him, discoursing on the latest cables from his agents around the world to a similarly clad group of disciples, many of whom may not have known that meanwhile back at the office workaday CIA officials were wrestling with such mundane problems as how to introduce Special Forces men into Bolivia and Colombia, or whether it would better serve the interests of the United States to dispose of a certain counterspy with poison or a garrote.

Particularly useful to Dulles in his empire building were businessmen and educators who traveled frequently, and therefore were well qualified to assist in the collection of information for "the old man." The fact that a number of such volunteers ended up serving time in communist prisons never seemed to deter new ones. In Dulles's view the information these people provided, although often helpful, was the least of their value; they were influential men who, because they had put in some time as "Agents," would always have a soft spot in their hearts for the Agency.

Of course Dulles did not increase the CIA's influence as much as he did just by image building. He was an organizer and a clandestine operator of great ability, and between the end of the Korean war and the election of John Kennedy, he had begun building the Team—with the CIA usually calling its signals, of course—and it had had a number of substantial successes. Overthrowing the Mossadegh government in Iran was one; overthrowing the Arbenz government in Guatemala was another—although perhaps from a connoisseur's point of view the latter operation was a bit on the blatant side. Perhaps the most brilliant of all was the spectacular building up of Ramon Magsaysay from an obscure army captain to the President and national hero of the Philippines. This latter feat was mostly organized by Colonel Edward G. Lansdale of the CIA, via the Air Force, a

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public relations genius of the old selling-iceboxes-to-Eskimos school.

Lansdale conceived the idea of making Magsaysay into the savior of his country from the communist "Huks" by recruiting, and paying with CIA funds, a few bands of Filipino soldiers who, every night or so, would put on peasant clothes, invade some villages with much ado, and then allow themselves to be driven out again by the intrepid forces under Magsaysay's command. Not infrequently after such an episode, the stage "Huks" and the loyalists would rendezvous in a nearby grove or field and re-enact the evening's performance to the accompaniment of much hilarity and beer. All of which, perhaps it need be emphasized, is not to say that Magsaysay was a faker or a figurehead; on the contrary, it is a mark of Lansdale's skill that he chose as the central figure in his hero-making exercise, a man with the attributes of a genuine hero.

Dulles was as adept at domestic as at overseas manipulation, and, during the Eisenhower years, when the CIA was being partially restrained, he recruited to the Team a number of frustrated young Army officers who were chafing against very nearly the same restraints. After Korea, Mr. Eisenhower and the Republicans had vowed "never again" when it came to committing American troops to battle in "brushfire " wars, especially on Asian soil, and turned to reliance on nuclear weapons as the core of American defense policy. This meant to the CIA that it could not get the troops it often would have liked to have to further its plans. It meant to the Army that the Air Force would receive the lion's share of professional opportunities and glory and, beyond the eternal matter of service rivalries, that by declining to fight any battles smaller than nuclear ones, America was giving up its capacity to influence any events smaller than apocalyptic ones. Such bright and eloquent generals as Matthew Ridgeway, James Gavin, and particularly Maxwell Taylor argued this case vigorously. Their notion was that it was essential for the United States to have a special counter-insurgency force prepared to put out brushfires around the world. Obviously, Dulles shared this view, if indeed he hadn't been one of the first to advance it. Kennedy, the activist, also agreed, and so it is no wonder that many leading members of the Secret Team favored him over Nixon, the Vice President in a non-activist administration—though probably himself less of a non-activist than his boss. By the same token, it also is no wonder that the Secret Team, especially by gaining control over the Special Forces, fared well after Kennedy's election. For when the action came, under Kennedy, it was the Special Forces which got the first call.

The Army Special Forces had been formed after World War II. In event of a Russian invasion, the 10th Special Forces in Germany were to be sent into Eastern Europe to create and sustain partisan movements behind the lines. With a small headquarters and reserve unit maintained at Fort Bragg, North Carolina, the Special Forces in 1960 consisted of only 1,800 men, poorly equipped and inadequately trained. William Pfaff, a consultant to the Hudson Institute and a member of the Special Forces reserves, described them as being "composed of self-consciously uprooted men, emotionally and intellectually detached from the mainstream of civilian society but also from that securely bland and sentimental Southern institution, the American Army itself." Under the rubric of counter-insurgency and nation-building, these men soon became CIA mercenaries.

Arthur Schlesinger, in his book *A Thousand Days*, recounts that President Kennedy "made anti-guerrilla instruction a personal project." After reading Colonel Lansdale's report on guerrilla operations in Vietnam (where Lansdale had been busily and quite successfully helping Ngo Dinh Diem become a savior of his country à la Magsaysay), Kennedy asked his special assistant Walt Rostow, fresh from the CIA-run Center for International Studies at MIT, to check

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into what the Army was doing about counter-guerrilla training. The President read Mao and Che Guevara and told the Army to do likewise. Kennedy instructed the Special Forces to expand its anti-guerrilla operations. Lansdale and his associate, Samuel Wilson, wrote new texts on counter-insurgency for Fort Bragg. After a visit to the training center, Kennedy, over opposition from the Army bureaucracy, revivified the Special Forces, and training centers were organized in Panama, Okinawa, Vietnam, and West Germany. "In Washington," writes Schlesinger, "Robert Kennedy, Maxwell Taylor, and Richard Bissell pushed the course. Roger Hilsman, drawing on his wartime experience in the hills of Burma, and Walt Rostow, analyzing the guerrilla problem as part of the pathology of economic development, carried the gospel to the State Department."

Fort Bragg and the regional centers were opened to foreign trainees. Ostensibly, the foreign officers represented the uniformed services of their countries, but actually some of them were handpicked by their nations' intelligence organizations and then had to be approved by the CIA. Under the guise of military aid programs, these men attended the Special Forces School at Fort Bragg. Officers came from over 60 countries, representing, among others, such surprising nations as South Africa, Saudi Arabia, Portugal, the Netherlands, Jordan, Bolivia, Sierra Leone, and Haiti.

A Green Beret-CIA team trained the Bolivians who captured Che Guevara. They have trained Iranian police, Chinese forces on Taiwan, King Hussein's élite paratroops in Jordan, and troops in South Korea. The CIA-Green Beret team has undertaken special training missions in Liberia and in the Congo. And currently Green Berets are advising the troops of Haile Selassie in the Ethiopian province of Eritrea. Under somewhat similar Army-sponsored programs the CIA provided for the training of a number of Tibetans. A *Washington Post* reporter who visited Fort Bragg in the summer of 1969 wrote that the Special Forces "anticipate endless 'insurgencies' in the underdeveloped countries of the world—from Africa to Latin America. And they are counting on American intervention in many of these situations." "In a way, we're a kind of Peace Corps," the training director of the Green Beret center explained.

After the Bay of Pigs, which some people vainly hoped would end large-scale, paramilitary CIA clandestine operations, President Kennedy appointed a board of inquiry to review the fiasco. Its members were Admiral Arleigh Burke, Allen Dulles, Attorney General Robert Kennedy, and General Maxwell Taylor. General Taylor, dissatisfied with the role the Eisenhower Administration had assigned to the Army, had retired from the service after his tour as Army Chief of Staff to write *The Uncertain Trumpet*. While serving on the board of inquiry, he became close friends with Robert Kennedy. Dulles and Bobby Kennedy recommended him for the post of Special Military Advisor to the President, and the President later named him Chairman of the Joint Chiefs of Staff. In those posts, by playing the game with the CIA, especially with respect to Vietnam, Taylor was able to preside over a major rebirth of the Army. The Vietnam build-up, whose beginning was engineered by the CIA, ultimately meant the abandonment of Eisenhower's exclusive reliance on Strategic Air Command and missile strategy in favor of the policy Taylor wanted—of developing a capacity to meet brushfire situations with conventional ground forces, Army forces naturally.

The most important respect in which Taylor played the Secret Team game was to acquiesce in giving the CIA operational control of the Green Beret forces in Vietnam and Laos. The CIA took full advantage of this unprecedented situation, which saw the agency in control of those forces at least through 1963, by using it to stimulate inter-service rivalries. The rivalries led to an increase in

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the build-up, and the build-up led to more power for the Secret Team. Because of the favored position of the Army's Green Berets, the other services thought it would be wise for them to have Special Forces of their own in Vietnam. The Air Force had a number of specialized aircraft and crews left over from the Bay of Pigs operation; these were organized into the nucleus of Special Air Warfare units and hurried to Vietnam to work with the CIA.

Not to be outdone by the Army and the Air Force, the Navy created special units known as SEAL (Sea-Air-Land) teams and sent them to Vietnam to work with the Agency. Since the Navy did not have the kind of small boats required for some of the action there (and perhaps because President Kennedy had been a PT-boat man), the Navy ordered a flotilla of PT-boats from Norwegian shipbuilders and had them delivered directly to Vietnam to join other small boats which were transferred from the U.S. Coast Guard—all to support potential clandestine naval activities and to keep up with the other services in the favor of the Agency.

Such actions resulted in a considerable clandestine build-up of forces in Vietnam long before the official escalation took place. And of course, once those forces were there something had to be done with them.

For example, the Air Force contribution consisted of units of C-123 medium transport aircraft. However, there already were plenty of medium transports in Vietnam—Caribous, under Army control, that had been flown there via the Atlantic, not having enough range to cross the Pacific. Consequently, Defense Secretary Robert McNamara had a squadron of C-123's converted at considerable cost to become defoliant sprayer aircraft. It may be too much to say that the defoliation program would never have been undertaken if those C-123's hadn't been sitting idly in Vietnam, but there is no doubt that their presence gave the program considerable stimulation.

The CIA is most adept at working in and around and through all levels of the U.S. government. No one, not even the majority of Agency personnel, knows the full extent of Agency manipulations within the governmental structure. The Agency can obtain what it desires in any quantity, and often for no cost. During the depression years of the 1930's, Congress passed a law which was known as the Economy Act of 1932 and, as amended, it is still on the books. This act, whose purpose is to save money and discourage needless spending, permits an agency that needs material to purchase it at an agreed price from another agency by an accounting off-set without spending "new money." For example, the Department of Agriculture can buy surplus tractors from the Army at a price agreed upon by both parties, even if it is only a dollar each. (Since most such equipment is declared surplus, whether it is or not, by the selling agency, the price usually is low.) By means of authority of this kind, the CIA has learned how to "buy" from all agencies of the government, primarily from the Department of Defense, a tremendous amount of new and surplus equipment—and to take over bases at home and abroad for its own use without appearing to have spent substantial funds and many times without the selling party knowing the true identity of the buyer.

This method of budgetary by-passing works something like this: The Agency creates an Army unit for some minor purpose which the Army and the Defense Department are willing to agree to. The unit is listed on the Army roster as, say, the 1234 Special Supply Company, Fort Wyman (fictional name), New Jersey. This small and inconspicuous unit is mostly manned by regular Army personnel but will have a few Army personnel who are actually CIA employees with reserve status, and a few CIA career employees. It can serve as a supply receiving point for holding Agency material prior to overseas shipment. After 1234 has been operating for a time and ap-

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pears to be a bona-fide Army unit, not only to the rest of the Army personnel at Fort Wyman but also to the real Army people who are serving with it, it will begin to requisition supplies of all kinds and amounts from the Army. This procedure continues for a time, then the unit will begin to requisition in a normal manner items from the Navy and the Air Force. Cross requisitioning is acceptible practice in all services today. The Navy and Air Force will charge the Army for the items transferred and the Army, having records on the validity of the unit, will honor the charges. It is easier for the CIA to requisition Air Force items using an Army or Navy unit than an Air Force unit, because the services monitor their own units more carefully than those of another service. Therefore, the CIA keeps a number of service units on tap at all times. With these hidden sources of supply, the CIA often can build an arsenal and support clandestine operations in some foreign country without the Department of Defense, much less the Department of State, ever knowing it—though presumably Defense could find out if it took the trouble to scrutinize carefully the activities of its various 1234's.

It was this power and freedom to move forces and equipment quickly without the usual review by proper authority that made possible the first entry of troops and equipment into South Vietnam in the early Sixties. In order to mount a particular operation it considered important, the CIA needed 24 helicopters and it obtained White House permission over strenuous objections from the Pentagon to have them sent to Vietnam. Sending 24 helicopters anywhere automatically means sending 400 men as well, counting only pilots and gunners and mechanics and cooks and clerks and bakers and the rest of the immediate establishment. If the intention is—and the intention always is—to give those 24 helicopters real support, then it involves sending 1,200 men. Moreover, the statistics are that, in any helicopter squadron, because of maintenance servicing requirements, only half the machines will be operational at any one time. So if 24 operational helicopters are needed, 48 will have to be sent, which means 2,400 men. But if you're sending a supporting force involving 2,400 men, then the support for *them*—PX's, movies, motor pools, officers' and enlisted men's clubs, perimeter guards to protect all this, and so on and so on—becomes really extensive, and thousands more men get attached to it. And so it goes. "Twenty-four helicopters" can, in fact did, ultimately mean a full-scale military involvement.

The CIA also knows how to get research and development contracts it initiates transferred to the Department of Defense when it comes time to make quantity purchases of the new equipment, and then, once DOD has spent the money, requisition that equipment back through outfits like 1234. Something very much like this happened with the M-16 rifle, which, as the result of the Team's machinations, is now a standard infantry weapon. The reasons the CIA first wanted the M-16 developed are obscure, though perhaps one of them is that it is a "NATO caliber" piece and therefore does not rely on American-made ammunition, and perhaps another is that it is small and light and therefore suitable for use by guerrillas and counter-guerrillas. In any case, a decision was made that the M-16 was needed in quantity by the CIA for certain operations in Asia, and Fairchild, the aircraft company, was given a research and development contract. At the time, the CIA was unable to elicit any interest at all in the project from the Army, which was fighting a rear-guard action against Secretary McNamara's decision to close its venerated Springfield Arsenal; it refused to look at a weapon that had not gone the Army Ordnance route. However, the CIA was able to push the M-16 through the office of the Secretary of Defense, over the head of the Army, and then induce the Air Force to put in a procurement order for 60,000 of the M-16's. Not long after the Air Force re-

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ceived delivery of the 60,000 rifles, they vanished mysteriously somewhere overseas.

The CIA is careful to maintain close relations with industry. It has been especially friendly for many years with Lockheed Aircraft, which developed the U-2 spy plane, and many other military contractors. The CIA was involved with the support of the Helio Corporation of Bedford, Massachusetts– a firm that produces a Short Take-off and Landing plane that has been very important to CIA-Green Beret operations over the years in Laos. (The founders of the firm are two former professors, Arthur Koppen, who used to head the aeronautics laboratory at MIT, and Lynn Bollinger of the Harvard Business School. Bollinger flew into Laos with early Green Beret teams which had established contacts with the Meo tribes.) Some plants manufacture equipment solely for the Agency; they are, of course, provided with elaborate covers.

The Agency's operatives appear in the organizations of many other government agencies. A visitor to the overseas office of a Military Advisory Group that presumably has a staff of 40 might find a hundred men working in the MAAG compound; these are CIA people whose salaries are paid by the Agency so that budget reviews in Washington will not reveal their existence. These people are in addition to the large number of military personnel carried on its budget for the ostensible purpose of cross-training; and this does not count the Special Forces troops that may be attached to the Agency in certain countries. Sometimes the official military may be unaware of the activities of supposed members of its own MAAG groups or other military organizations. In similar fashion, as revealed by *Los Angeles Times* reporter Jack Foisie, the CIA is using the State Department's AID program as a cover for clandestine operations. In Laos, the number of agents posing as civilian AID workers totals several hundred. They are listed as members of the AID mission's Rural Development Annex. There is also a Special Requirements Office in the AID compound which provides supplies for CIA clandestine operations.

The military aid given to a foreign country is carefully tailored by military planners and is related to what is given to other countries in the region. However, a foreign air force chief of staff, for example, may wish to have a squadron of modern reconnaissance aircraft for his country's use. He contacts the local CIA station chief and explains that he would employ these aircraft on missions of interest to the Agency. The Department of Defense might have turned down the request, but the local commander will press his claim with the CIA. The Agency might want to have the added services and will take the request to the Agency headquarters in Washington—and the country will get the squadron of modern reconnaissance fighters. Such a scenario is not unlike very recent transactions that have taken place between the U.S. and Taiwan.

In sum, during the last decade the White House's National Security Council apparatus and the CIA – particularly its operational side which now has nine overseas employees to every one on the intelligence-gathering side—have grown enormously both in size and in influence. More and more foreign-policy decisions are being made in secret, in response only to immediate crises rather than in accordance with long-range plans, and all too often with very little consultation with professional foreign-policy or military planners. More and more overseas operations are being conducted in secret, and ad hoc, and with very little control by professional diplomats or soldiers. And the one organ of government that, on behalf of the people that elected it, should be monitoring these goings-on, is today as ignorant as the public—because Congress submitted to secrecy on a grand scale years ago when it authorized the CIA. It is hard to imagine how or when the Secret Team can be brought into the open and made publicly accountable for its actions. ■

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Census '70: Power to the Suburbs

by Gerald M. Pomper

Like a souvenir photograph, the national Census often captures a critical moment in the passage of time. Permanently recorded every 10 years, the Census can serve as an official testament to the trends of American history. In 1890, for example, the Census marked the authoritative end to the frontier, for there was no longer an unbroken line of new settlement in the West. In 1920, the nation's transformation into an urban civilization was made clear by the population figures which showed, for the first time, that a majority of the population had deserted its rural roots.

The 1970 Census will record another major transformation of America. The nation is now suburban: the residents of split-level America are now the largest residential group in the population. The special importance of this Census is that, because of the series of court decisions on reapportionment, suburban numbers will be quickly translated into suburban voting power. Earlier Censuses, by contrast, were frequently ignored in the allo-

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cation of legislative seats. After the 1920 Census, for example, Congress denied the urban areas their voting majority by refusing to reallocate its seats. Similarly, the state legislatures were under no compulsion, until the one-man, one-vote decisions, to allocate their seats on the basis of population. Much reapportionment has, of course, already taken place, but it has been on the basis of the 1960 Census. Now the legislatures will have to be reshuffled on the basis of the 1970 figures, and the result will be suburban predominance in the House and in the legislatures of most of the important states.

Suburban Congressmen will be the largest geographical group in the House. In an analysis of Congressional districts based on the Census, Professor Richard Lehne of Rutgers University foresees 129 Members from the suburbs, and 62 more from mixed city-suburban districts. The central cities will have 100 Representatives, and the non-metropolitan areas, 37. Compared to the situation before the court decisions, the central cities will have lost half a dozen seats and the non-metropolitan areas 144. Ironically, the cities will lose voting power because of court decisions they actively sought. On the assumption that malapportionment was particularly detrimental to urban interests, city Representatives were active in bringing suits, in passing new districting legislation, and in resisting attempted rollbacks like the Dirksen Amendment. Having won their battle, the cities are now discovering they were fighting the wrong war. It was the suburbs not the cities that were underrepresented in the House, and it is the suburbs that have gained power, from rural areas and cities alike, as a result of the one-man, one-vote decisions.

Blacks are the one urban group that may gain political power through the new Census. The 1970 count will show blacks to be an increased portion of the nation—between 11 and 12 per cent, compared to one-tenth in 1960. A majority of this black population will be found outside of the South, and principally in the big cities, which can provide a base of political power. Direct municipal control by blacks has been shown to be possible in Cleveland and Gary, and the importance of the non-white vote for white mayors was demonstrated in John Lindsay's reelection in New York. More blacks will also be elected to Congress from these areas. Total urban representation in Congress will shrink, making it more difficult to gerrymander districts to preserve white majorities. The likely tendency will be to concentrate the ghetto areas within the same Congressional districts and concede the seats to the blacks.

This tendency has already been evident in recent redistricting. When new lines were drawn in New York, the black ghetto of Bedford-Stuyvesant in Brooklyn, previously splintered among the surrounding areas, was concentrated into a new district which elected Mrs. Shirley Chisholm, a black. The latest plan in that state also provides for a Puerto Rican seat constructed of parts of three counties. In St. Louis, previously split among three city-suburban constituencies, urban areas were combined to provide a district from which William Clay was elected as the first black Congressman from Missouri.

Throughout the nation, it is easy to forecast a substantial increase in the number of non-white Congressmen, although the number will remain far below the proportion of blacks in the population. According to the 1960 Census, the present nine black members of the House all come from districts with a majority of Negro residents. A number of other urban districts were then reported as having a 40 per cent black population, and this number is likely to be substantially increased in the 1970 enumeration, providing a base for new black representation. A new Negro Representative is certain to be elected this year from Chicago, in addition to a replacement for retiring William Dawson. Others are quite likely soon from Baltimore, Detroit, Newark, New York, and

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Philadelphia. Altogether, there are 20 districts outside of the South with a black population over 30 per cent, all of which are likely sources of new black Representatives in 1970.

Proportional representation for blacks in the Congress will not be achieved, however, until they win seats from the South. The barriers against such representation are stronger than in the Northern cities, but the considerable increase in black voting following the 1965 Voting Rights Act makes it possible. Three Southern districts, as drawn in 1960, had a black majority, and 30 others had at least a 30 per cent black proportion in the total population.

Any urban gains by blacks will, however, appear only within the larger framework of an overall loss of power to the suburbs. If the suburbs call the tune, the music is not likely to sooth urban ears. Some preliminary notes have already been heard. In the reapportioned New Jersey legislature, Governor Richard J. Hughes tried to initiate special programs to aid Newark and other poor and riot-torn cities. By the time the suburban-dominated legislature got through with the Governor's program, the new aid benefited the affluent suburbs more than impoverished cities. In New York, the state legislature has refused to provide any significant amount of help for the New York City subways, which carry two million urban passengers a day, although it is willing to underwrite the losses of the Long Island Railroad, which brings 100,000 commuters to and from their suburban homes. In Michigan and California, relief for the property tax payer, usually suburban, is a popular cause; relief for the city-dwelling poor is not.

Suburban-controlled legislatures will spend money for purposes other than those favored by the cities. Education is the largest and most popular expenditure for suburbanites, and they will seek to increase their states' shares of this expense. While city residents need funds for education, they also desperately need aid for welfare, hospitals, housing, and law enforcement. In the clash of interests, spending for suburban education is likely to win over spending for urban welfare. Similarly, suburban programs for tax reform emphasize middle-class needs such as deductions for college tuition or user fees and tolls. Relief of low-income taxpayers is likely to be neglected. Furthermore, when urban aid is provided, suburban legislators can be relied upon to insure that these programs are not financed by their constituents—as through a tax on commuters—but by the urban residents themselves, through sales taxes, higher transit fares, and the like.

Similar results can be expected in Congress. The upcoming issues will be those with which suburban legislators can identify. Stress will be placed on education, inter-city transportation by road and rail, and environmental pollution. There is little reason to expect much pressure for public housing, a "Marshall Plan" for the ghettos, direct subsidy of city mass transit, or guaranteed employment for the poor and the black. Significantly, the Model Cities program has been broadened to make suburban areas eligible for assistance.

The main hope for the cities in a suburb-dominated political order lies in the fact that the suburbanites cannot, much as they might like to, entirely disown their poor urban relations. In some major issues of public policy, suburb and city are as indissolubly joined as Siamese twins. One twin contracts a disorder and, when it spreads to his brother, the second twin will have to help the first in order to help himself. Two current examples are air pollution and drug addiction. Air pollution is not new in cities; it has become politically significant because sulphurous breezes are now blowing over the green suburbs. Similarly, drug addiction has been prevalent in New York City for a quarter of a century, but it did not become a national issue until heroin invaded the sheltered schools of Westchester. In neither of these cases can the suburbs achieve their own goals without helping the cities. If

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they do not want their air to be poisoned, the suburbs will have to appropriate the money to control pollution at its urban source. And they will have to grapple with the fact that heroin cannot be kept out of the suburbs as long as their children can easily buy drugs on the streets of the cities.

Suburban power will influence the way both politics and government are conducted. In politics, the prospect is for a continuing decline in the strength of party organization. The organization is typically less disciplined and effective in middle-class areas which neither need nor want the traditional rewards of patronage. The suburban style is far more ideological and issue-oriented, as seen in both the Goldwater and McCarthy campaigns, which drew many suburban activists who had little loyalty to either party as such. More legislative districts will become competitive, with fewer safe Republican seats from the countryside and safe Democratic seats from the sidewalks. On the whole, the Republicans are likely to make a net gain, as Republican rural and Democratic urban districts are converted into suburban seats that more often than not vote Republican.

In Congress, the new suburban plurality will add muscle to movements for reform of the structure of the House. Congressmen from suburban districts are not likely to accept indefinitely a gerontocratic power structure based on safe city and rural seats (e.g., Speaker John McCormack and Democratic Majority Leader Carl Albert). Given the political style of their districts, suburban Representatives will feel less beholden to their weak party organizations than to the issues on which they were elected, and on which, in competitive districts, they can easily be defeated if they do not deliver. The seniority system has little appeal to a Congressman from a suburban district in contrast to the city or rural newcomer who sees his ultimate reward in lifetime loyalty to the organization that put him in office. These trends are already evident in the present House, where suburban districts supply a disproportionate number of the rebels in both parties: New York's Allard K. Lowenstein of Nassau County and Ogden Reid of Westchester are examples. The Congress which is elected in 1972 will undoubtedly have more such rebels, whichever party wins a majority. Ironically, the rebellion against seniority may be to the detriment of black Congressmen. Since blacks are typically elected from safe seats, they stand to gain from seniority: at one time two of the four black Congressmen, William Dawson of Chicago and Adam Clayton Powell of New York, were committee chairmen.

The shift in power toward the suburbs will help to meet some goals of the "good government" movements. Structural improvements and efficient administration are middle-class reforms likely to appeal to suburban legislators. Revised constitutions, increased civil-service coverage, and modern budgeting procedures are apt to be adopted in the redistricted legislatures. Reduction of rural political power will also probably lessen the imposition of rural morality on a state's citizens. The current movement toward liberalization of abortion and divorce laws, abolition of the death penalty, and easing of pornography statutes can be partially attributed to the more cosmopolitan disposition of the new suburban plurality.

Despite some such hopeful signs, the general effect of the Census is to give added power to people who have been unwilling to support major innovations in governmental policy. The continuing westward shift of population will benefit conservative politicians. More votes will be cast in Ronald Reagan's California, Lyndon Johnson's Texas, and Barry Goldwater's Arizona. The East, except for Florida, will lose votes and power. Sawing off the Eastern seaboard will be a more popular platform than when Goldwater first proposed it in 1964. All in all, those who will gain power from the Census do not seem to be people likely to be inspired by the onset of the third century of the American Revolution.■

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Crime in the Courts: Assembly Line Justice

by Leonard Downie, Jr.

The elderly lawyer pushed through the swinging gate in the dark wooden railing separating court officials from the public and walked up and down past packed rows of spectators. He was dressed for the racetrack, where he intended to spend the afternoon, in an orange and green sport coat, bright green slacks, and soft white leather shoes, and his clothes were a flash of unexpected color in the drab, stuffy, downtown courtroom.

It was 10 o'clock on an August morning in Recorders Court, which is the criminal court for the city of Detroit. In many ways, the scene could have been any criminal courtroom in the United States.

"Jackson," the lawyer called out. "Sam Jackson."

He was trying to find a client he had seen only once before, months ago, when he had been appointed to defend the man for a $100 fee from the state of Michigan. On that first day, he stood briefly beside Jackson as he was arraigned and a date set for his trial. Until this morning, when a courtroom clerk handed him a copy of the official court "paper" for the case, the lawyer had done nothing more.

"Jackson," he called again.

A slightly built black man in a polo shirt and work pants rose hesitantly a few rows back in the audience. Sam Jackson, a sometime laborer and truck driver, had, his past record showed, been connected off and on with gambling and dope. Arrested nearly a year earlier for possession of a concealed pistol, found when a police detective stopped and searched his car, he had been free since then on bail while waiting for his trial. Today, he was one of many defendants, mostly black, crowded together with relatives and friends in the worn wooden pews of Courtroom No. 8.

To these benches and to the barred cells hidden behind the courtroom are brought each day scores of men and women charged with felonies: murder, rape, robbery, burglary, serious assault, the sale or possession of narcotics, and the illegal possession of a weapon. Many, like Jackson, wait a year or longer to be tried. But, for most of them, trial before a judge and jury never comes.

"Jackson?" the lawyer asked, pushing down his glasses to peer at his client.

Leonard Downie, Jr., is a reporter for The Washington Post. *This article is part of a book, tentatively entitled* Justice Denied: The Case for Reform of the Courts, *to be published by Praeger Publishers, Inc., early in 1971.*

Illustrations by New Thing

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"Okay, okay; sit back down. I'll be with you in a minute."

Turning, he walked through the gate again toward a cluster of perhaps 30 policemen, all in street clothes, standing and gossiping idly near the empty jury box on the left side of the courtroom. In the confusion and cacaphony that characterize the criminal courtroom scene, the policemen were balanced by a swirling, changing mass of as many men opposite them. These are the criminal lawyers, most of whom work in Courtroom No. 8 every day. Their only clients, whose fees are usually paid by the state, are those assigned to them by the court. Some keep dingy offices in squat, grimy buildings across narrow Clinton Street from the Courthouse; others have no offices at all and operate out of the courtroom itself. Known collectively as the "Clinton Street bar," they carry no briefcases and seldom consult lawbooks; their case preparation consists of marking trial dates in dog-eared datebooks and scanning court papers hurriedly on the day a case comes up. Jackson's lawyer is one of the more flamboyant Clinton Street barristers.

By this time, as the lawyer passed by, the judge was already seated on his perch atop a two-tiered wooden platform, surrounded by clerks, bailiffs, and other functionaries shuffling through and stamping papers just below him. Save for the two or three persons standing immediately before him to conduct business, nobody seemed really aware of the judge's presence. Lawyers, policemen, clerks and others criss-crossed noisily in front of his bench, streamed back and forth through the swinging gate, and generally kept up an ocean's roar of conversation that crashed around the pronouncements of the judge, occasionally drowning out his words altogether.

"Detective Sanders," Jackson's lawyer loudly addressed a policeman in a gray suit. "You got the Jackson case?" The policeman, recognizing the attorney from past dealings, nodded. "Good," said the lawyer, still several feet away. Then, ignoring the judge nearby, the lawyer shouted the question that, in Recorders Court, takes the place of trials, juries, legal rules, and the rest: "Hey, Sanders, what can you do for me today?"

Coming together in the middle of the courtroom, the lawyer and policeman began to haggle amiably over what reduction the government might make in its charge against Jackson if he agreed to plead guilty, rather than go to trial before a jury. If convicted of the felony charge by a jury, Jackson would be given

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a prison sentence of several years. The law required it. The policeman suggested to the lawyer that the charge could probably be reduced to "failure to present a gun for licensing," a misdemeanor carrying a penalty of only 90 days in jail, *if* Jackson agreed to plead guilty immediately. Together, the lawyer and detective Sanders then crossed in front of the judge to join a line of other attorneys and policemen that stretched to a back room occupied by the prosecutor, who is himself seldom seen in the courtroom.

Case by case, the prosecutor and each lawyer, usually joined by the policeman involved, hammer out a bargain for a guilty plea, similar to the one that Jackson's lawyer was seeking. If the accused agrees to admit guilt, rather than insist on a trial by jury, the government reduces the charge against him, often seemingly assuring the defendant of a lighter sentence. Thus, a man charged with armed robbery, which carries a mandatory 20-year prison sentence, might plead guilty to unarmed robbery or attempted robbery, and receive a sentence of a few months or years in prison. Another, charged with burglary, might "admit" to attempting "unlawful entry." The changes are not made simply to fit the facts of the crimes involved; usually, the robber *had* used a gun, or the burglar *had* succeeded in getting inside a house and carrying off an armful of valuables. Instead, the change is made to induce the defendant to trade the possibility of a long prison term (against a chance for freedom if acquitted by a jury) for the promise of a shorter sentence.

In Sam Jackson's case, the prosecutor readily agreed to the bargain offered by the lawyer and policeman. The lawyer came out, found Jackson again, and took him into the bustling hallway outside the courtroom.

"I got you 90 days," he told Jackson enthusiastically. He did not refer at all to the crime itself or to his client's actual guilt or innocence. "It's a good deal. You have a record; you go to trial and get convicted on the felony and you're in trouble."

Jackson nodded agreement.

"Remember," the lawyer cautioned as the men started back inside the courtroom, "don't hem and haw in front of the judge, or he might insist on a trial."

Jackson's turn came quickly. He stood mute while the judge, a shrunken man in his sixties, sorted through papers on his desk and read out the defendant's name and address and the charge originally placed against him. A court stenographer recorded everything on a stenotype machine.

"The prosecutor has signed a statement that he will accept your plea of guilty to a lesser charge," the judge announced, in words familiar from uncounted other cases. Then, like a clergyman leading a litany, with Jackson responding at appropriate pauses, he intoned, "You are pleading guilty because you are guilty?"

"Yes, sir."

"No one has threatened you, or promised you anything?"

"No."

"No one has induced you to plead guilty?"

"No."

"You understand your constitutional right to a trial, and you are freely waiving that right?"

"Yes."

Turning sideways in his overstuffed swivel chair to stare out a soot-clouded window, the judge wearily recited, as he had again and again already that morning: "Let the record show that counsel was present, that the defendant was advised of his rights and that he understood them, and that the defendant waived his right to trial by jury or this court, and that he freely withdrew his plea of not guilty and entered a plea of guilty." The stenographer took it all down. The judge swiveled around again and sentenced Jackson to 90 days in jail.

Plea bargaining is what the lawyers call it.

No trial. No jury of peers. No ex-

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haustive search for truth. No exacting legal rules. Only empty, sometimes dishonest words substituted for the reality of "due process" guaranteed by the Constitution.

A lawyer who knows next to nothing about his client or the facts of the crime with which he is charged barters away a man's right to a trial, and, along with it, the presumption that a defendant is innocent until proven guilty—the presumption on which the American system of criminal justice rests.

A prosecutor who knows little more about the case than what a policeman tells him hurriedly trades off one of American society's most important responsibilities—the responsibility for providing for those charged with criminal acts a full hearing and the levying of appropriate sanctions upon those convicted of crimes against that society. The judge, who has abdicated his authority to bartering lawyers, acquiesces in all this and sanctifies it for "the record." Everyone pays lip service to justice. But everyone's true faith is in expediency.

And why not? An indifferent public has allowed the system to become overwhelmed with work: too many cases for too few judges, too few lawyers, too few clerks. An uncaring legal community has failed to modernize the system to cope with the inundation. How else can the system survive, except by trying to dispose of cases as fast as it can?

Plea bargaining instead of trials is the answer in crowded criminal courts across the nation. In New York, prosecutor and defense attorney haggle over guilty pleas in front of the judge's bench in frenetic whispers between cases. In Chicago and San Francisco, the bargaining is often done in polite confidential conferences, sometimes in the judge's chambers, with his participation. In Washington, D.C., brisk and businesslike plea bargaining is conducted in small glass-enclosed cubicles in the prosecutor's office before the case goes to a judge. In Dallas, prosecutors bargain directly with incarcerated defendants through jailhouse bars. According to the best estimates, at least 90 per cent of the persons "convicted" in American courts are never proven guilty at all. Instead, they plead guilty without trials.

Everyone in the system, including the judge and the defendant's own lawyer, offers inducement or exerts pressure for a guilty plea to save the time and trouble of a trial. If the prosecutor is not empowered to reduce the charge, the judge makes it clear that his sentence will be lighter for a guilty plea. Those who insist on a trial, the most basic of constitutional rights, are openly punished by prosecutors and judges with maximum charges and harsh sentences.

Sometimes, the judge takes a leading role in the bargaining process. In one routine case in Chicago's criminal court, selection of a jury began at 10 a.m. for the trial of a young Mexican-American charged with selling heroin to an undercover agent. As the tedious process of interviewing jurers dragged on into late morning, the judge suddenly interrupted and asked the opposing lawyers: "Do you want a conference in this case?"

In Chicago, that's the signal to begin bargaining. The prosecutor and lawyer followed the judge out of the courtroom to his chambers and, once inside, the prosecutor offered to reduce the charge to possession of heroin. The judge, noting that it would be the youth's second conviction for that offense, said that he would sentence him to a minimum of five and a maximum of 10 years in prison if he would plead guilty. (In Illinois, where most sentences include both a minimum and maximum time, the maximum for a second narcotics conviction can be life imprisonment.)

The defense lawyer, a law professor who frequently volunteers to defend indigent suspects free of charge, refused the deal. "Too much time," he said about the proposed sentence.

"Look," the judge warned him, "if that man is convicted by a jury, I'll give him 20 years. You take some of my time; I'll take some of his."

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But the lawyer refused to give in. The three returned to the courtroom. Most of another hour went to interviewing jurors, and lunch time neared. The prosecutor called the lawyer over with him to the judge's bench, saying in an anxious undertone, "Look, I'm busy. I've got another case to be tried this afternoon. How about two to 10 years?"

The judge inclined his head in agreement. But the defense lawyer countered with two to five years. (Reduction in the maximum end of the sentence can mean earlier parole.) The judge thought a moment, grimaced, and gave in. The defendant pleaded guilty.

Most often, a prosecutor starts off the plea bargaining process by charging defendants in ways designed to produce compromises. In Cleveland, Ohio, and Washington,D.C., for instance, a defendant is regularly charged with a slew of offenses covering a single crime: a bank robber is indicted for armed robbery, theft, one charge of assault with a deadly weapon for every customer and teller he pointed his gun at, possession of an illegal weapon, and so on. In California, under a strange old law, a technical charge of kidnapping is thrown in for good measure if the robber orders victims at gunpoint to move around, lie down, or open a safe. If the defendant in these or similar situations pleads guilty, all the charges but one are dropped. What happens if he chooses not to plead guilty? In Cleveland, if a defendant insists on a trial and is convicted, the judge often metes out for each charge separate sentences that must be served one after the other. Under Ohio's law for minimum-maximum sentences, this practice leads to such absurdities as a sentence of 12 to 240 years in prison (one to 20 years for each of 12 charges) given a woman convicted of embezzling union funds.

In places where the prosecutor habitually levies only one charge for a crime, usually the strongest suitable for the circumstances, prosecutors and defense attorneys—especially public defenders, who are also paid by the government and work alongside the prosecutor in court every day—operate on informal understandings that certain charges will always be reduced to certain lesser offenses. In California, for instance, according to a recent study by the University of California Center for Legal Studies, burglary is usually reduced to petty theft, assault with a deadly weapon to assault without a weapon, and molesting children to loitering at a school playground. In cities like Detroit and Chicago, where armed robbery frequently becomes unarmed robbery if the defendant pleads guilty, the decision to plead is called "swallowing the gun." In Washington, D.C., the distinction between a plea to felonious assault and to simple assault, which is a misdemeanor, often is based on the number of stitches required to close the victim's wounds. In New York City, four of every five defendants originally charged with a felony wind up pleading guilty to a misdemeanor.

"We are running a machine," a Los Angeles prosecutor has told one researcher. "We know we have to grind them out fast." A Chicago prosecutor vows: "I'll do anything I can to grind them out fast."

So, frequently, will the defendant's own lawyer, whether he is a public defender or privately retained, with the result that, on almost any day in a big city criminal court, a defendant can be seen disavowing before a judge a guilty plea arranged by his lawyer.

Such was a typical case on a typical day in San Francisco's Superior Court. Three defendants in a burglary case were supposed to plead guilty in exchange for being placed on probation. Their lawyers had made the arrangements with the judge in his chambers. But when the defendants themselves came before the judge from the lockup, one insisted that he was not guilty. "This is not what I expected," his lawyer, a public defender, said sheepishly, as the judge ordered a date set for a trial. On the way out of the courtroom, the public defender apologized to the lawyers for the other

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two defendants that their scheme had gone awry. "The best laid plans of mice and men," he muttered. "That guy doesn't know what is good for him."

In Detroit's Recorders Court, where only three of every 100 criminal defendants is ever tried by a judge or jury, the plea bargaining system is merely a little more overt than elsewhere. Once a deal is made, every formal rule and safeguard is blatantly twisted to accommodate it. Thus, on the same morning that Sam Jackson made his guilty plea for failure to present a gun for licensing, a man charged with burglary decided to plead guilty to attempted unlawful entry. He was questioned by the judge about when and where the crime took place, as Michigan law requires if there is any doubt about accepting the plea in lieu of trial.

"Where did the offense occur?" the judge asked.

The defendant was silent. Clearly, he did not know or could not remember. The judge picked up a police report and read off an address. "Is that the one?" he asked.

"Yeah, that sounds like it," the man answered.

The judge then read off a time, a date, and a list of items stolen from the house identified. The defendant said it all seemed to sound right. The judge accepted his plea.

"Why are you pleading guilty?" another judge, G. W. Crockett, asked another defendant, a 20-year-old with a bushy Afro hair style, on another day.

"To get off," the youth answered matter-of-factly.

"What?" demanded Crockett, a black man who has been something of a dissenter and unsuccessful reformer in Detroit's Recorders Court.

"I want to get probation," the young man said. "I want to get out of jail." (He had been imprisoned 150 days awaiting trial.) "They said I could get out this way, that you'd give me probation. Besides, I didn't really rob anybody. I just took some reefers off that woman's bed. I was visiting there. We were friends. I just slipped them out. I didn't pull any knife like they said."

Crockett, an ebony-skinned man with graying hair, shook his head. The youth had been charged with armed robbery. The prosecutor decided to allow him to plead guilty to larceny, a misdemeanor, so that he would be eligible for probation or a sentence of only a few months in jail, instead of 20 years in prison.

"I don't know," Crockett said, his voice rueful. "Either you committed a crime or you didn't. Just reducing the charge doesn't make much sense. We need more facts. But what can I do?" He accepted the plea and put the youth on probation.

A tough-looking young white man, more than six feet tall and heavy-set, came before Judge Crockett next. He was pleading guilty to attempted felonious assault.

"But it says here," Crockett interrupted, reading from the police report, "that you hit a man repeatedly with a beer bottle."

"It was just an argument," the defendant protested, and he described a sidewalk altercation in front of a cafe. First there were angry words, then he hit the other man with a beer bottle that he had carried out of the tavern with him. The victim was knocked to the ground.

"And then what happened?" Crockett asked.

"He got back up, so I hit him again," the man explained. "After a few more times, he didn't get up any more."

Crockett quieted loud laughter in the courtroom and stared straight ahead for a moment, seeming to search with anxious eyes for help in making sense of what he was hearing.

"And I understand that the victim nearly died," he said, more to himself than anyone else. "*Attempted* assault," he repeated, drawing out the word "attempted" very slowly. Yet Crockett had to accept the plea. He had the prosecutor's signed statement accepting it, sealing the bargain. There was no other alternative. The system had decided.

The next defendant, a young black

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man in a blue suit whose bearing was uncharacteristically refined for Recorders Court, told Crockett that he was a college student from Detroit attending school in Alabama, where he kept a gun to protect himself. Driving back home with friends, he left the gun under the floor mat in the back seat of his car, where he had always kept it at school. As he drove through a white Detroit neighborhood, he recounted, his car was stopped by policemen, who said he was speeding but gave him no ticket. Instead, they frisked him and his friends and searched the car, found the gun, and charged him with illegal possession of a concealed weapon.

In many ways, the student's case was similar to Sam Jackson's, except that this youngster had no prior police record. He was formally admitting guilt to the charge of not presenting the gun for registration.

Crockett appeared disturbed. "If the facts are what you say they are, you should not be pleading guilty," he told the youth. "Those policemen had no right to search you or your car—that is, *if* you are telling the truth. Without a trial, without questioning the policemen or other witnesses, I have no way of telling.

"That's what's wrong with this system," Crockett's voice rose. "If you're telling the truth, you shouldn't be convicted of anything. And what those police did should be brought out into the open. But without a trial, I have no way of knowing if you're lying or not. This way, there is no review of this practice of police just pulling people over and going through their cars. That's why these things go on every day here, because we have vacated our responsibilities."

Always, in plea bargaining, compromises are struck between guilt and innocence. Little connection is made between who the accused person is, what took place that let to his arrest, what happens to him in the courtroom, what is done with him next. Decisions on whether to free a convicted man on probation or how long he should instead be sentenced to prison are based most often on what must be done to seal a bargain for a guilty plea, rather than on whether or how a guilty person should be punished or rehabilitated. In fact, nobody can be certain that innocent persons are not being convicted, nor, more frequently, that habitual criminals are not being let off lightly. The first possibility undermines the very foundation of our legal system. The second increases daily disorder in society by reinforcing in the wrongdoer a smug certainty that the law is something he need never really respect.

But plea bargaining is not the only shortcut to justice practiced regularly in criminal courts today. Many thousands more cases—in many places, half the court's serious criminal cases—never get even as far as the plea-bargaining stage. The defendants charged in them—innocent and guilty alike—are arbitrarily set free before a trial, in effect acquitted by default, because the overburdened system cannot accommodate them.

Under pressure to keep the judge's case calendar as light as possible, the presecutor drops charges against defendants wholesale before the cases can reach the judge. These decisions, made by a young assistant prosecutor, usually overworked and inexperienced, are most often based on a quick glance at police reports of arrests. Summarily, he tosses out cases that seem too "weak," cases involving charges such as a husband's beating his wife that seem too "cheap," those involving as defendants neat-looking, middle-class people who seem "respectable" and not likely to get into trouble again.

Frequently, perhaps, the prosecutor is dispensing admirable justice and saving the system from needless further congestion. But nobody ever knows for sure. The prosecutor makes no investigation of his own before acting. Most often, no judge reviews his decision.

In their turn, some judges throw out

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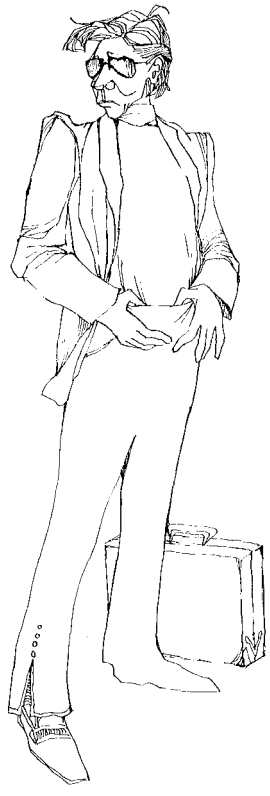
still more cases in large lots when they reach them in the courtroom. The judges, too, base their decisions on no more than a look at a court paper or a remark from a prosecutor or defense lawyer.

Other defendants, usually the often-convicted and knowledgeable, win freedom simply by out-waiting the courts. Patiently, they endure delay after delay arising as a natural product of the overloaded system, and then they have their lawyers stall still longer with procedural tricks and requests for postponements that nobody has time to challenge. In the end, witnesses who have come back to court again and again stop showing up, or, as the months pass, even the most conscientious among them find that their memories fade. Judges and prosecutors become impatient with musty cases that further bog down their operation; a carefully timed request by the defense lawyer, often on the day when witnesses are not there, is enough to persuade them to throw the case out.



There still are trials. But when a rare criminal trial does take place before a judge, or a judge and jury, it is as often as not a shadow drama of the real thing, played out by poorly prepared lawyers before obviously uninspired judges (who sometimes conduct their more productive guilty plea business off to the side of their bench while the trial is in progress). Seldom, except for the most complicated, serious, or glamorous cases, has the prosecutor or even the defense lawyer (who have crowded schedules of their own) planned what he was going to do in advance. Sometimes, the judge has to coach the prosecutor or defense lawyer, or both, to ask questions of witnesses or make motions they would not otherwise have thought to do themselves. Or, conversely, the harried judge must work to speed up the case, reminding the lawyers not to "stall" with questions or arguments that seem unrewarding to him, and prodding a jury that spends more than an hour or two deliberating its verdict. Lawyers for both sides in the chaotic Manhattan branch of New York City's Criminal Court say that a long trial there is any that lasts more than 10 minutes.

In several cities, including Baltimore, Cleveland, and Chicago, persons charged with misdemeanors—vagrancy, disorderly conduct, simple assault, gambling, shoplifting, and other petty thievery—are usually not represented by lawyers when they are tried. In Baltimore's Municipal Court, not even a prosecutor is present for criminal cases. The arresting policeman, who often looks uncomfortable doing it, must present the government's evidence to the judge and sometimes point out information favorable to the defendant that otherwise would be overlooked. The judge must ask the questions that a prosecutor or defense lawyer would ask, suggest the arguments, if any, that they might make, and, in the end, decide the outcome of the case. There is no jury, no court reporter, not even a court clerk. Legal rules are treated nonchalantly, and such usually inadmissable

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evidence as hearsay testimony often is allowed.

The assumption that anyone accused of a crime in the United States has a right to a full adversary trial of his guilt or innocence—with well-prepared advocates for each side, carefully overseen by an able, even-handed judge, searching diligently for the truth and satisfying all legal rules and safeguards—is fundamental to our system of justice, and to the general populace's confidence in it. Yet, with few exceptions, this concept has become little more than a still-celebrated myth of both folklore and formal jurisprudence. Not only in Perry Mason dramas, but also in real life appellate court decisions, the body of criminal law, and urgent legal controversies, the myth is still believed to represent reality. As a result there is little in the way of formal rules, high court pronouncements, or even informed legal or public opinion to ensure that justice is done in the way that men and women are actually "tried" every day in American courts.

Instead, everything is left up to the criminal court bureaucracy, which, like its counterparts throughout government and private commerce, is concerned first with its own day-to-day survival. Judge, prosecutor, defense attorney, policeman, and clerk are working partners struggling to keep their heads above water as the flood of cases rises unceasingly. Is it not natural that, for them, expediency should take precedence over justice, eventually becoming one and the same with it in the minds of the bureaucrats?

Only a few voices from within raise any alarm. A bar association in New York City condemns "mass assembly-line justice" that rushes defendants into guilty pleas "in violation of their legal rights." A New York state appellate judge warns that "instant justice" is "converting our courthouses into counting houses." An exasperated Washington, D.C., city judge, now chief judge of the General Sessions court there, complains that criminal courts have become "factories where defendants are quickly processed like so many sausages."

"Wherever the visitor looks at the system, he finds great numbers of defendants being processed by harassed and overworked officials," the widely respected legal educator and researcher, Edward L. Barrett, Jr., has written. "Suddenly, it becomes clear that for most defendants in the criminal process, there is scant regard for them as individuals. They are numbers on dockets, faceless ones to be processed and sent on their way. The gap between theory and reality is enormous."

Indeed, momentous Supreme Court decisions and currently fashionable public and legal debates over criminal law and the rights of the accused are simply irrelevant to what actually happens each day inside the courtroom. In many cities, judges and lawyers never bother to explain to defendants (as appellate courts have instructed them to do) the various constitutional rights they can invoke to protect them in court. Despite high court rulings on the right to a lawyer, many defendants still do not have one, or else they wind up with courthouse hangers-on of dubious ability who can get no other clients.

The admissability at a trial of a confession obtained by police is perhaps the most debated public issue concerning criminal courts, but it is essentially a moot question in a system in which 90 per cent of those convicted admit guilt anyway, in the courtroom. Appellate court decisions and legal controversies over what evidence can be used against defendants when they are tried are virtually meaningless when few defendants are ever actually brought to trial. Accusations that judges are too lenient or harsh on criminals, or too pro- or anti-police, assume powers that judges often no longer exercise in deciding guilt or innocence, or even fixing sentences, in many criminal cases.

Mass production criminal justice in the United States dates back at least to before the first national surveys of

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American courts in the 1920's and 1930's began to document and decry the gradual disappearance of adversary justice in criminal courtrooms. (No systematic study has ever been made of the workings and consequences of the mass production processes that have evolved, such as plea bargaining.) But expediency has not necessarily meant efficiency. Quite to the contrary. In many cities, the court system's traditional disorganization and the avalanche of work now crashing down onto it seem to be leading inevitably to the day when the criminal court machinery may grind to a standstill.

"They are just spinning their wheels now," observes one veteran lawyer about New York City criminal courts, which he, as an official of the Vera Institute for Justice, a non-profit legal reform "think tank," is studying and trying to improve.

"People talk about the criminal courts breaking down," he says. "The fact is, here at least, they *have* broken down. But nobody wants to admit it."

The volume of criminal cases in New York City's court system has more than doubled in a decade, and each judge must face as many as 200 serious criminal cases each day. One of the most respected jurists on the bench of Criminal Court in Manhattan, Simon Silver, abruptly resigned in late 1969 because he was "fed up with congestion."

"I feel I cannot give the cases the real attention they're entitled to," Judge Silver said when he decided to step down after 22 years' service as a magistrate and judge before his current term expired. "As each case comes up, a judge should have the time to listen to the lawyers, to evaluate the situation, to determine whether violence is involved and must seriously be considered. The defendant's background should be explored, and the reasons for his actions. Sudden emotional flare-ups should be treated differently from crimes that seem to be chronic.

"At present, I find that I cannot dispose satisfactorily of more than 15 cases a day. The rest [usually 100 to 200 or more] are adjourned [postponed to another day], and that creates a heavier backlog. I have to spend more time on adjournments [setting dates for future hearings of the postponed cases] than in listening, considering, and disposing."

Despite the haste with which many other criminal court judges run through cases, there are on any given day more than 7,000 criminal defendants in jail awaiting their turn in court in New York City. In Detroit, Cleveland, Chicago, and Washington, D.C., defendants often must wait a year or longer for their cases to be tried or otherwise concluded. In Lynn, Massachusetts, late last year, a man charged with armed robbery was finally ordered freed unconditionally after the state failed to try his case within the two-year limit set by the state constitution.

The criminal courts are the neglected stepchildren of already overcrowded, undermanned, niggardly financed, and hopelessly antiquated state and local systems of trial courts. In New York City, some criminal court judges must conduct court in converted clerks' offices and judges' robing rooms. In Baltimore, Cleveland, and Chicago, among other places, most misdemeanor cases are tried in makeshift courtrooms located on the upper floors of old police stationhouses, while the police continue doing business downstairs. These rooms are like those of old tenements, with exposed pipes, peeling paint, falling plaster, and exposed wood. Only second-hand accessories and an old desk for the judge make them officially courtrooms. There is seldom room for half the participants to sit.

In Chicago, felony cases are tried in the deteriorating Cook County criminal court building adjacent to the notoriously rundown county jail. Its badly lit, accoustically impossible, poorly maintained courtrooms provide a stark contrast to the bright, well-designed, extravagantly furnished modern courtrooms

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provided for the city's well-heeled civil case lawyers and litigants in the new 30-floor, glass and steel Civic Center building downtown. In city after city, the criminal court is kept separate, in older buildings and rundown neighborhoods, from the rest of the trial courts and their silk-suited barristers who operate in the better downtown districts. Nowhere do the criminal courts have enough judges or supporting personnel. Methods for scheduling cases and keeping records (usually all by hand) have remained largely unchanged since courts were first established in the American colonies.

Criminal court is where the chief judge sends rookie, hack, or senile judges who cannot be trusted with complicated civil cases. The majority of the private-practice lawyers appearing before them are counterparts of Detroit's Clinton Street Bar (called "Fifth Streeters" in Washington, D.C., for instance, and the "Baxter Street Bar" in New York City). They wait for judges to appoint them to cases, or they prowl the halls soliciting work from defendants and relatives of defendants who pass by. If they are not paid by the local or state government, management of their clients' cases is built around efforts to extract money from defendants or relatives. The client is told pointedly that the quality of service depends on the fee. If time is needed for the money to be raised, the lawyer has the case postponed in court. Judges knowingly cooperate in this fee collection effort by postponing the case without reason when a lawyer gives the signal. In New York, the attorney always tells the judge he needs time to locate a witness, a "Mr. Green."

The derelicts who seek and often find peaceful repose on the front steps or inside the corridors of criminal court buildings in city after city make the message clear: criminal court is for the dregs of society and the lowly of the legal community.

The absence of much concern, scrutiny, or help from the outside reinforces in criminal court bureaucrats a profound cynicism and resistance to criticism and change. The malaise eventually overtakes even many of the young and idealistic newcomers joining the staffs of the prosecutor, public defender, or the probation office chief.

This "hostile attitude toward 'outsiders' " is actually a "defensiveness" on the part of courthouse bureaucrats who must each day satisfy the demands of assembly line disposal of intolerably large caseloads by legal "shortcuts, deviations, and outright rule violations adopted as court practice," observes Abraham Blumberg, a noted lawyer and sociologist who has been studying mass production justice from a new perspective.

"Fearfully anticipating criticism on ethical as well as legal grounds, all the significant participants in the court's social structure are bound into an organized system of complicity," Blumberg has written. "Breaches and invasions of 'due process' are institutionalized, but are, nevertheless, denied to exist."

The conspiracy leaves out the defendant.

"Accused persons come and go in the court system," Blumberg has pointed out, "but the structure and its personnel remain" day in and day out. To keep going, to survive the pressures of the workload, and to avoid facing the injustices they are party to, "they must preserve their own relations and interaction at all costs.

"The client becomes a secondary figure in the court system. He may present doubts, contingencies, and pressures which challenge or disrupt...but they are usually resolved in favor of the organization. Even the accused's lawyer has far greater professional, economic, and other ties to the various elements of the court system than to his own client. In short, the court is a closed community."

Nowhere is Blumberg's analysis better documented than in New York City's Criminal Court in lower Manhattan. There, in a dingy, tomblike building filled each day with milling throngs, can be found typical, if sometimes extreme,

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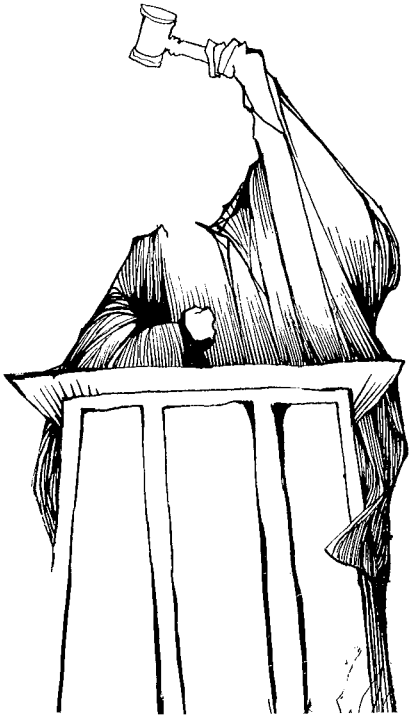
examples of the distortions of justice that assembly-line processing produces at every stage in the criminal court system.

The nerve center of Criminal Court is Part 1-A. Through it, during daytime and evening sessions, passes a daily procession of 200 to 500 defendants arrested that day or the night before for every kind of crime, making their first appearance in court. Most are represented at this initial hearing by lawyers from the Legal Aid Society, a quasi-public defender supported by the city and private donors. Those who can afford it hire their own lawyers—frequently from the Baxter Street Bar—before their next date in court, if there is one.

The pandemonium in Part 1-A is unique even for a criminal courtroom. Defendants on bail, victims of and witnesses to crimes, and others fill the wooden benches and line the walls. Dozens of policemen, in plainclothes with badges pinned on suits, sports shirts, and windbreakers, scurry about, retrieving defendants for their cases from the public pews or the lockup behind the



court, bringing them and their papers before the judge, and returning them after each case. The scene in front of the judge is a constant jumble of people bumping into one another as defendants, policemen, and witnesses for each case come and go. The pace is so rapid-fire that the judge himself often has time only to check his calendar and set dates for cases to be continued to another day. Most of the talking is done by a bailiff called the "bridgeman," who in each courtroom of Manhattan's Criminal Court, stands just below the judge on the bottom level of the two-tiered platform.

"Numbers 104, 105, 106, 107, 108, and 109, step up here," a swarthy, dark-haired, gruff-voiced bridgeman shouts in calling a case with six defendants arrested for possession of narcotics. "Hurry it up, hurry it up."

The defendants squeeze between the prosecutor and the Legal Aid lawyer in front of the judge. Policemen and witnesses crowd around them. The two lawyers operate in shifts with other prosecutors and defenders. Each stands for about an hour in front of the judge, taking cases as they come. The prosecutor knows nothing about a case until it is called and he sees the court papers for the first time. Sometimes the Legal Aid lawyer has interviewed defendants briefly through the bars in the lockup, or he is given a scanty fact sheet by another defender who saw the prisoner.

In a rapid tobacco-auctioneer's sing-song style, the bridgeman reads the formal charge against the defendants so fast it can barely be understood.

"Put up your hands," the bridgeman orders the policemen who made the arrest. Under New York law, they must swear to the veracity of the charge they filed. They stick up their right hands, but they are not really paying attention to the bridgeman; they are explaining their case in whispers to the prosecutor. The Legal Aid lawyer leans over to try to overhear them. The bridgeman rattles off the oath: "Officers, doyouswearthat-thisistheaffidavityousigned?" No response, but it doesn't matter. "Put your

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hands down," the bridgeman growls.

"All right, QUIET in here," he interrupts himself to shout. "Shut that door back there."

"Howdya plead, howdya plead?" the bridgeman demands of the Legal Aid attorney, a young blonde woman. She frantically asks a few whispered questions of some of the defendants and turns to the prosecutor to confer with him.

"Let's go, let's go," the bridgeman barks. "Officers, Number 110, Stanton, is next. Have the prisoner ready. We've got to move along."

After a few more words with the Legal Aid lawyer, the prosecutor announces that charges against four of the men will be dropped. There is no explanation why. A date is set for the trial of the other two, who plead not guilty.

"All right, all right, you can go," the bridgeman tells the four who were let go. "Hurry it up." The other two men are to be returned to the lockup, but the bridgeman first has to advise them of their rights. This is his most practiced speech, a series of run-together sentences delivered without looking up as he sifts through his papers for the next case:

"Youunderstandyouhavetherighttoanattorneyortherighttoanadjournmenttoprocureone. Ifyoudonothavethefinancialresourcestoaffordanattorneythecourtwillappointoneforyou. Youalsohavetherighttocommunicatefreeofchargebytelephoneormailwithanyofficerofthecourt."

His voice rises:

"All right, put the prisoners away. Take them away."

Already, he is calling the next case. "Number 110. Stanton. Let's go. Step to the other side of your attorney, mister. Hands out of your pockets. Officer, put your hand up."

Frequently, defendants and witnesses are rushed away by the bridgeman before they understand what was decided about the case or when and where they are to return to court for the next hearing. In many cases, nothing more is done than the setting of a date for trial. Other cases are dismissed by the prosecutor, usually with no reason given. Occasionally, a guilty plea is arranged on the spot after a whispered conference in front of the judge. The judge passes sentence right away.

In one case, the Legal Aid lawyer announced that her client wanted to plead guilty to assaulting a policeman. But the defendant said he "didn't hit nobody." The judge ordered a date set for trial.

No case lasts more than five minutes. Many are over in 60 seconds.

During a break, one young prosecutor, just out of law school, said he likes the system. "It becomes routine," he explained with some pride. "You can look at the first couple of lines on the [police] complaint and tell what the case is about, what the state can prove. The defense attorney is equally skilled. You just learn to think quickly on your feet. It's fascinating. I enjoy it."

From Part 1-A, cases go to myriad other branches, depending on the nature of the charge, supposedly to be tried. But most of the branches are mere clerking operations in which dates are set by the judges for further postponements of the cases. The prosecutor is waiting for the defendant to agree to plead guilty. The defendant is trying to outwait the government and have the case dismissed. The excuses for delays run the gamut, but nobody believes them or cares. By court rule, after several postponements, the judge marks the next excuse the "final" one for the defendant or the government. But that means nothing. Cases wind up marked "final, final, final" against the defendant or government, and still another postponement is granted. Witnesses, told they must show up each time the case is scheduled, are forced to return to court five and six times on the average, often only to find the case dismissed or the defendant pleading guilty. Only five of every 100 cases are eventually tried by a judge. "If even 10 per cent ended in a trial," one prosecutor says, "the system would

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break down."

The judge's main function in courtroom after courtroom is merely to consult a calendar and order "Pick a date" for each case to be postponed to. Baxter Street lawyers seem to limit their practice to asking judges for delays and pleading their clients guilty. They buttonhole new prospects in the halls and confer with current clients in the aisles of courtrooms even as the judges are conducting business.

Occasionally, a trial is held. Most defendants in trials are represented by Legal Aid lawyers. Often, the defender and the prosecutor are friends and carry on playful banter during the brief trial. They make agreements on many issues beforehand, to save time. Their case presentations are austere.

In one such trial, a middle-aged Puerto Rican man with a wife and two children was charged with indecent exposure at a subway station—the complaining witness was a secretary whom he had annoyed. The prosecutor, a pretty young woman with long brown hair, could not resist smiling and joking with "Bill," the Legal Aid lawyer, during the 15-minute trial. The case was already a year old and had been postponed nine times. Both the defendant and the secretary were tense and confused as they tried to recall the incident. The prosecutor cleverly trapped the defendant into a mistake about the time of an alibi. The judge was persuaded and found the man guilty.

"Your talents were wasted on that one, Bill," the prosecutor told the Legal Aid lawyer as the case ended.

"I tried to get him to plead guilty to loitering months ago," Bill explained. "But he wouldn't do it."

Avoiding "unnecessary" trials, processing the sausages with the bridgeman's "Let's go, let's go" haste and determination, ignoring the fates of defendants and crime victims alike, blotting them out as human beings: this is the business of New York City's Criminal Court and its counterparts across the face of the country. The necessity to move cases quickly is the central task. Determining guilt or innocence, deciding on the treatment of offenders, and dealing with those in the public who are dragged into the process are all secondary matters. Means are shaped not in accordance with the constitutional ideal of justice, but rather to satisfy the ends of the bureaucracy in its daily battle with caseloads.

A committee on minimum standards for criminal justice of the American Bar Association has, for instance, given plea bargaining institutional legitimacy by declaring that "conviction without trial will and should continue to be a more frequent means for the disposition of criminal cases." The system "cannot operate effectively unless trial judges in fact grant charge and sentence concessions to most defendants who enter a plea of guilty."

This is one of the committee's conclusions in a recent report on plea bargaining, made without any real study of the process. Yet, later in the same report, the committee virtually contradicts itself by insisting that judges should still consider "rehabilitative, protective, or deterrent" purposes in passing sentence, and should not impose heavier than justified sentences whenever "the defendant has chosen to require the prosecution to prove his guilt at trial."

The public has not been consulted; the Constitution has not been amended; but someone has here adopted a different standard for justice than the one that has always been a first lesson in civics for school children. Imagine, a defendant *requiring* the government to prove his guilt at trial.

What can one conclude but that David Burnham, the award-winning crime reporter for *The New York Times*, was right when he summed up the experienced visitor's disgusted reaction to what is happening today in criminal courts? Describing Manhattan's Criminal Court, he in effect described every other: "the most cynical place in the world."■

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The Culture of Bureaucracy:

I'm Glad You Asked That Question

December 8, 1969

Hon. William P. Rogers
Secretary of State
Washington, D. C.

Dear Mr. Secretary:

I would like to know what your views are regarding the Hickenlooper Amendment to the Foreign Assistance Act of 1961. Do you recommend its repeal or its continuance? Has it been an asset or a liability in our negotiations with Peru, and in our relations with other South American nations?

I look forward to receiving your reply.

Sincerely,

Lee H. Hamilton
Member of Congress

* * *

December 22, 1969

Hon. Lee H. Hamilton
House of Representatives
Washington, D. C.

Dear Congressman Hamilton:

The Secretary has asked me to reply to your letter of December 8 concerning the Hickenlooper Amendment.

In the wake of our recent crisis with Peru the question of whether this amendment serves the national interest has become increasingly debated within the Executive Branch. It is the view of the Department that the Hickenlooper Amendment does not add to the President's authority to protect American business abroad, and in fact introduces certain elements of inflexibility that can make it difficult for the Executive Branch to shape a response that is appropriate to and likely to be effective in a particular case. For instance, the six-month time limit prescribed by the amendment leads to public, time-specific confrontations that make it more difficult to carry out the delicate negotiations that are necessary to resolve these difficult problems. In this sense at least the amendment is a liability in our negotiations with Peru over the expropriation of the properties of the International Petroleum Corporation. In effect, the amendment tends to put all U. S. interests in a country at risk on a single issue, admittedly a very important issue.

On the other hand, this provision of law was intended to act as a deterrent to uncompensated expropriations and other actions against U.S. investors in violation of international law. This is an important purpose and a legitimate concern of the Congress. While questions can be raised as to whether the amendment in its present form is an effective instrument for that purpose, there are different opinions on this matter that deserve careful consideration. In addition, we are faced with some current and potential expropriation situations which would affect both the substance and timing of any position the Department might take on possible adjustments in the amendment.

At the present moment, we are not prepared to make any definite recommendations on the future status of the amendment, but we will be considering this issue as events develop in the next few weeks.

We continue to believe in the importance of the role private investment can play in the development process. As the President noted in his address before the Inter-American Press Association on October 31, "constructive foreign investment has the special advantage of being a prime vehicle for the transfer of technology" to developing countries. Whether private investment is attracted to a particular country depends on many factors, particularly business confidence in the foreign government and its readiness to abide by rules of international law. As the President states, "a capital importing country (must) expect a serious impairment of its ability to attract investment funds when it acts against existing investments in a way which runs counter to commonly accepted norms of international law and behavior." We believe this is an important thought we should keep in mind in reviewing the Hickenlooper Amendment.

If I can be of further assistance, please do not hesitate to let me know.

Sincerely yours,

H. G. Torbert, Jr.
Acting Assistant Secretary
for Congressional Relations

From *Congressional Record*, January 22, 1970

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Messiah from the Midwest?

by Nick Kotz and James Risser

As Harold Everett Hughes sat waiting to be sworn into the United States Senate, an incumbent Senator and fellow Democrat poked him in the back and whispered emphatically, "I don't like you."

"Why?" demanded the incredulous freshman at this strange introduction to a chamber fabled for its elaborate if often meaningless courtesies. "You don't even know me."

"Anyone who would nominate Gene McCarthy has to be a goddamn nut," the veteran Senator rasped.

Hughes, a three-term governor of Iowa, had deeply offended many established party regulars by denouncing Lyndon Johnson's Vietnam war policies and delivering the presidential nominating speech for Senator Eugene McCarthy at the chaotic 1968 Democratic National Convention in Chicago.

But something in the older Senator's manner and the familiar odor that accompanied his whispers told Hughes—a recovered alcoholic—that presidential politics had little to do with the apparent malice the Senator bore him. He suspected what it was. That night, the same Senator telephoned Hughes at home and offered a semi-apology. Obviously reluctant to hang up, the Senator told Hughes he didn't really know why he had called. "I know why you called," said Hughes. "You have a drinking problem and you think I can help." Denials were followed by admissions and finally the arrival of a car to take Hughes to the Senator's home. They talked into the night, and at Hughes's suggestion the Senator was hospitalized under an assumed name. During Hughes's first three weeks in the Senate, he spent as much time with this Senator as he did learning his new duties. At last report, the Senator was not drinking.

Harold Hughes will be mortified and angered that this story has been told; he will worry about betrayed confidence and hurting someone he tried to help. The story, nevertheless, tells a great deal about the man most often mentioned as the leading darkhorse candidate for the Democratic presidential nomination in 1972—the man the party might turn to if Muskie, Humphrey, McGovern, Kennedy, and McCarthy are all found wanting.

It is his personal involvement in problems—you don't intellectualize about the evils of alcohol; you go out and help a victim turn loose of the bottle—that has marked Hughes's development as a public official. Always at the root is a sensitivity to pain and suffering and an em-

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Nick Kotz and James Risser are Washington correspondents for The Des Moines Register and Tribune. *Between them, they have covered the political career of Harold Hughes over the past 10 years, both in Iowa and in Washington.*

Photograph by Okamoto

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pathetic identification with sufferers and underdogs.

Hughes is in one sense a fundamentalist reformer—"There are a couple of members here I'd like to work on.... People should quit worrying about electing a recovered alcoholic to Congress and start worrying about electing those who are still drinking," he confided to a visitor—but he also is an exceedingly cautious and deliberative politician. Although never hiding the fact that he once had a drinking problem, Hughes was well established as a successful governor before he ventured to discuss publicly his own past alcoholism and his role in Alcoholics Anonymous.

The trademark of the Hughes political style has been an outspoken forthrightness on issues, presented with all the charismatic advantages of rugged good looks, imposing physique, deep bass voice, and compelling personal intensity.

Yet his arrival at clearcut positions on these issues has been a far more complex process than his strongly stated beliefs would indicate.

Practitioners of the new politics and opponents of the Vietnam war may not know, for instance, that Harold Hughes, the dove who opposes the Vietnam involvement, is the same man who four years ago successfully built support for the war effort by organizing a governors' tour of Vietnam in which George Romney received his much-publicized, self-admitted "brainwashing."

The Senator Hughes who fought President Nixon's closing of Job Corps centers in 1969 also was the Governor Hughes who badly dragged his feet on initiating the first anti-poverty programs in his state in 1965.

The Hughes who fights for civil-rights causes in 1970 is the same man who just three years earlier watched passively, if benevolently, as Negroes struggled to pass open housing legislation in Iowa.

These contrasts are not to suggest that Hughes is an opportunist or that he has made wild swings in the political pendulum in the classic manner of true believers. Rather they illustrate that he has exhibited a remarkable capacity for growth as a public official, that he has carefully measured the distance that a liberal Democrat can lead a conservative Republican state, and that broadening personal experiences have sharpened and sometimes totally reshaped his politics.

Hughes is intelligent but he is not an intellectual, and he makes decisions after seeing, experiencing, feeling what is right or wrong.

This explains why, despite the urgings and threats of his liberal advisers and fund suppliers in Iowa, Hughes could not turn against his President on the Vietnam war issue until he had experienced LBJ's personal crudities and had decided that he dangerously "wasn't listening to anyone anymore."

It shows why he could not strongly identify with the agony of the poor and the black ("The first time I ever saw a Negro I wanted to drive around the block and take another look because I'd never seen one in my youth.") until 1967 when he walked the streets and looked into the faces in the small but despairing ghetto areas of Des Moines and Waterloo, Iowa.

It was the personal experience of seeing the Iowa delegates for McCarthy frustrated at every turn by party machinery (plus recollections of his own political beginnings opposed by the party rulers) that led him to head the successful floor fight in Chicago creating a Democratic reform commission.

Harold Hughes sometimes is a little slow in getting the message—and he broods unhappily when he wanders through the complex gray area of a problem—but when he develops a personal focus on the issue he responds with a religious fervor which is another essential ingredient of his nature.

There is little doubt that Hughes would like to be President of the United States, that he feels an enormous desire to lead the country, and that in his own way he is both seeking and preparing for

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the job of President.

His remarkable journey began 48 years ago in the "American midlands where the corn and wheatfields extend farther than the eye can see. . .the land of the great populist tradition." He grew up in the Depression in a kind of leveling rural poverty where you never felt poor or deprived even though survival meant trapping for food in the winter time. The house had no plumbing or electricity and the first family Christmas tree was one Harold won in a school raffle.

He graduated from high school in his native Ida Grove, a county seat town of 2,300 people where he distinguished himself as an all-state football and tuba player and was known as "Packy"—short for "Pachyderm" and based on his big, blocklike physique.

The next 15 years were unhappy, turbulent ones. He dropped out of college after less than a year as the bottle began to loom large in his life, briefly cut grass in Des Moines to support his teen-age bride Eva Mercer, and then went off to the personal horrors of combat infantry in North Africa and Italy. He was no leader of men then; personal survival was the issue. He left the Army four years later still a private, returning to his wife and two infant daughters he had scarcely seen. The big man drove trucks and settled down to serious drinking, finally quitting in the mid-1950's, jarred by the realization he could awake in a hotel room 100 miles from home and not know how he got there.

What emerged was not the distinguished public official who was to become his state's most popular and successful governor, but a rough-hewn man of limited knowledge whose first political drives were fed by the religion of Methodism and Alcoholics Anonymous and by an aggressive desire to help small truckers like himself who were being victimized by the big boys and by the Iowa Commerce Commission.

He formed his own trucking bureau to represent the little trucker, but discovered that he could not make a dent in unresponsive government. His frequent complaints to Democratic Governor Herschel Loveless produced the suggestion that Republican Hughes switch political parties and try to change the Commerce Commission by getting elected to it. Eighteen months prior to the 1958 election, Hughes announced his candidacy on the Democratic ticket and haltingly began a political career.

"He looked like a porpoise in a fishbowl" to Loveless's assistant, Park Rinard, who watched the giant man in lumberjack shirt sprawl out in his tiny $2 hotel room and pour out his grievances against "the goddamn big truckers." It was political love at first sight for idealistic and intellectual Rinard, who sensed the very raw makings of a great politician. Integrity, passion, and commitment brimmed over, and Rinard knew these are qualities that come in no political make-up kit. So they began a unique partnership, in which Rinard has been an all-important backroom adviser and confidante. Theirs is a deceptive combination—Hughes, tough on the outside and perilously gentle underneath; Rinard, the misty idealist, writer, and gentle secretary on the outside but inwardly tough as steel and politically shrewd.

Hughes was elected. He did a fair job of ending discrimination against the small truckers and stopped, by his mere hulking presence, the most obvious political corruption on the Commerce Commission. Within two years Harold Hughes was running for governor. For it had been borne home to him that government can help or hurt underdogs beyond the ones he knew well: in the prisons and mental hospitals where the alcoholics ended up, still other losers were being ground down.

He discovered the prisons and the mental hospitals from Rinard and two other men who served on the state board charged with administering them. John Hansen and George Calenius were natural attractions—big, tough men like himself, personally conservative, but with their conservatism moderated by deep strains of populism.

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Hughes and Hansen sat down one night, and a Hughes still filled with political innocence said "one of us ought to run for governor and the other for lieutenant governor." That way they could do something for drunks and convicts and other underdogs, and they could get more power and recognition for Protestant yeomen like themselves who had very little voice in Iowa Democratic politics.

The party generally was a closed machinery of Irish Catholics who handed out or were handed occasional bits of patronage without ever seriously concerning themselves with trying to win elections or to improve the state. The annointed gubernatorial candidate in 1960 was E.J. "Nick" McManus, a wavy-haired, handsome party regular whose time had come for attempted advancement.

McManus clobbered Hughes, but not before a 1960 state political convention which left a lasting impression in Hughes's mind and which actually was the beginning of his successful 1962 campaign. McManus told the convention delegates mainly of his ancestoral Democratic roots—with inferential questioning of just who was this small-time Republican-turned-Democrat opponent? Hughes's ascent to the speaking platform was greeted by frenzied cheering and sign-waving for his opponent. And then something happened. Hughes read a speech calling for prison and mental hospital reform, reapportionment of the legislature, and modernization of Iowa government. He read it haltingly, sometimes stumbling over long, unfamiliar words, departing from the text only when substituting ungrammatical verb tenses for proper ones. Despite his obvious forensic defects, the bass voice was deep, the convictions came out of a natural method actor, and the ideas were sharp and clear. The audience became silent and then loudly applauded the man 80 per cent of them would vote against in the primary election. Park Rinard had written but the first of many issue-oriented speeches; Hughes knew he could command the attention of Iowans and sensed he could win them.

In 1962, he defeated incumbent Republican Governor Norman Erbe and commenced the first of his three successive two-year terms in the gold-domed Iowa Statehouse. On the surface, it seemed ironic that reformed drunk Hughes had been elected by speaking out boldly in favor of legalized liquor-by-the-drink in Bible-belt, dry, conservative Iowa. In reality, he was igniting a revolution in Iowa politics. The state was in the throes of transition from a rural to an urban economy and urban mores, and was without any political leadership. By dodging a clear-cut stand on the issue of legal martinis, Governor Erbe tiptoed down the established path, seeking election by offending the fewest voters. The Hughes victory was termed an upset, just as his subsequent successes continued to produce amazement, but the real surprise is that so few politicians, reporters, or business leaders really understood what was happening in the state.

As he would on many future issues, Hughes tapped a latent Iowa majority who desired a more progressive state image (they were tired of jokes about the little old lady from Dubuque and about key clubs) and who wanted more of their political leaders than cautious mediocrity.

With a shrewd calculation of the real moral issue, Hughes wrote to every minister in Iowa, accurately describing to them the hypocrisy and the pervasive corruption that flowed from statewide bootlegging. In his pocket, politician Hughes also carried a poll that told him two-thirds of the state's 2.8 million population wanted legalized liquor. But the wets did not elect him, as it turned out. The victory margin came from dry, rural Iowans who identified with a man who spoke straight on the issues, even though they disagreed on the liquor question.

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The budding political revolution widened in the 1963 session of the Iowa General Assembly.

Passage of liquor-by-the-drink was followed by regulation of state utilities, by partial home rule for cities and towns, by more road funds for the cities, by interest payments on previously idle public funds in the state's banks, and by a fair employment law. The Hughes platform called for all of these reforms and many others enacted by more progressive midwestern states many years earlier. But it was Hughes's sidekick Rinard, a few skilled liberal legislators, plus persistent reporting from *The Des Moines Register and Tribune* which pushed the issues.

The lobbyists for the Farm Bureau, for the manufacturers, and bankers' associations reacted ineffectually and with disbelief as Rinard (by now the executive director of the League of Iowa Municipalities but unofficially a Hughes one-man kitchen cabinet) moved forward undreamed-of state government reforms. On utility regulation and bank reform, Rinard and Hughes put together a new populist coalition of city men and farmer legislators who had their own ingrained dislike of the small-town bankers, merchants, and private utilities who so often had squeezed them hard.

Hughes stood in a mystique of leadership and political power, the new elemental force who might at any moment go to the people as he had done with the liquor issue. Often unsure of himself in those days, Hughes brooded for hours in his office, hating the easy familiarity of hand-shaking politics. He defensively berated the university board of regents who came with arrogant superiority and elaborate academic language to get more money from this truck driver fellow who never finished his freshman year down at Iowa City. The sophisticated liberals underrated Hughes, just as he reacted nervously in the presence of the polished, educated men.

"When he started out," says a member of his Iowa administration, "he couldn't even look a Democratic state senator in the eye and tell him how he wanted him to vote. He was docile and backward." This was not the same Harold Hughes who seven years later would, with assured ease, impress Eastern intellectuals and industrialists who sought his leadership in a fight for new directions in American policy. As his syntax improved and his knowledge of public affairs increased in geometric leaps, he developed confidence in the power of his own personality.

In 1963, Hughes went into Iowa's outdated prisons, interviewed every man serving a life sentence, and commuted more sentences than any Iowa governor in history. He soaked up with empathetic horror their stories of homosexuality, contraband, and prison guard corruption. He listened to the frightened tears of a "stool pigeon" convict, freed him on parole, and later declined extradition after the young crook violated his parole. That the young criminal was a con man Hughes knew full well. But the youth was afraid to die in prison and this was a fear to which Harold Hughes's response was, though legally questionable, one of mercy.

Toward the end of 1963, Hughes went into his familiar shell, still annoyed by detailed decision-making and perplexed about a legislature-approved reapportionment plan that was going to the voters. Most Democratic political leaders advised him not to oppose the plan, which supposedly was popular with rural and small-town voters who would be given iron-clad minority control of one legislative chamber. Finally, with a click into sharp focus on the issue, Hughes plunged into the struggle and, against long odds, defeated the plan almost single-handedly. The plan was unfair and Hughes said so flatly, though there was not yet a one-man, one-vote decree to back him up.

Winning re-election in 1964 by the biggest margin of any Iowa governor in history (Hughes actually ran far ahead of

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LBJ's landslide victory over Barry Goldwater) and carrying a Democratic legislative majority into office with him, Hughes shed cleanly the issue of his own past alcoholism. His victory margin was bolstered when the Republican nominee, desperate in the closing days of the campaign, slyly questioned whether Hughes had lied about the date when he quit drinking. As Iowa State University Professor James Socknat wrote: "In the Bible Belt one may attack sin, but woe to the man who attacks the converted sinner."

With his first and only Democratic majority behind him, Hughes raced ahead with the task of modernizing state government. By the end of the 1965 legislative session, his accomplishments read like a laundry list from the League of Women Voters: reorganization of state government, increased aid to universities and to elementary and secondary schools, penal reform and repeal of capital punishment, a system of vocational-technical schools, and industrial safety legislation. Politically cautious on the governor-killing issue of taxes, he deferred a much-needed tax increase and managed instead to pay the bill for improved government services by spending the one-year windfall from a new withholding system for state income taxes.

Hughes was increasingly surefooted politically in his second term (1965-66), but he still could hesitate and stumble when the issue was complex and dangerous and when his political instincts led him into a gray solution rather than a morally-based black or white one.

Heady with the success of Democratic control of the state, his labor supporters demanded repeal of the state's right-to-work laws. There was no populist coalition to support this position in still-conservative Iowa, and Hughes ducked the issue. In the process he temporarily got tangled in the semantics of "open shops," "union shops," and "agency shops." The latter was the gray position he adopted, but his solution satisfied neither labor nor management and Hughes looked uncharacteristically indecisive. "He got away from the real Harold Hughes on that one," says a member of his administration. "He tried to play politics and he got into trouble." Perhaps, however, realistic politician Hughes accurately gauged the limits of Iowa liberalism. With certain knowledge that the United Auto Workers, his primary labor supporters, had their plants 100 per cent unionized and so were not concerned, Hughes simply made the best of an impossible situation.

In his final term as governor (1967-68) Hughes again chalked up legislative achievements, even though the Legislature again was largely in Republican hands. The state finally adopted a long-overdue tax increase, combined with property tax relief and massive school aid, with Hughes acting the role of mediator in the closing days of the session.

But it was another law that is more clearly illustrative of the growth of Hughes's skill as a sensitive mediator and his emergence as a civil libertarian. It exempted the Old Order Amish, a small religious group in northeast Iowa, from sending their children to state-certified schools. People of the soil, opposed to "worldliness," driving horse-and-buggy and shunning new inventions like the automobile, determined to preserve their dwindling culture, they long had operated their own schools and taught their young in their own way.

When the state began to crack down and sent school buses to take the children to the certified schools, the children fled into the cornfields. Hughes, sensing again the plight of the underdog, went into the community to meet the Amish leaders in their homes. As a temporary solution, he persuaded them to use state-certified teachers in their Amish schools, wangled $30,000 from a private foundation to help pay the teachers' salaries, and cleared the whole arrangement with the local school district. Then, when the Legislature convened, he proposed a bill to exempt the Amish from attending public schools if they would use certified

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teachers in their own schools and if the instruction met certain minimum standards. It was a long-shot settlement because of the sentiment for uniform school standards and because it could be argued that this was state support of religion. But Hughes won. "I always recognized the logic and the integrity of those who sincerely believed that such an exception should not be made," he told the Legislature after the bill was approved. "But sometimes it is wiser to be tolerant of non-uniformity and to bend laws rather than people."

The 1967 Harold Hughes who coped courageously and delicately with Iowa's rural Amish still seemed strangely insensitive to growing issues of race and poverty. Just as he hesitated at becoming involved in the quickly-maligned "war on poverty" (Iowa was the 49th state to qualify for participation in the program), Hughes did not push adoption of an open-housing law being considered by the Legislature.

"He's always had some compassion toward the races," remembers one fellow state official, "but as late as 1967 he didn't seem to think open housing was a 'must' issue. Some of the Democratic legislators wanted Hughes to push for it, but he just didn't see it."

Strangely enough, the basically conservative Legislature, goaded by the emotional eloquence of a black legislator from Cedar Rapids, did see it and passed a new law forbidding discrimination in housing.

Immediately thereafter, the education of Harold Hughes began on matters of poverty and racism. Without disputing his assertion that he always wanted to help "the underprivileged and forgotten," it is clear that few other Iowans, including Hughes, had bothered to focus on the problems of Iowa's one per cent black population, isolated in a few urban enclaves. As for poverty, it is finely masked behind the deceptive veneer of rich, rolling cornfields and Iowa-proud self-sufficiency. Hughes simply had not seen or felt the problem and could not identify with it. Obviously, he should

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have read about a black revolution raging across the country, but Hughes's concerns were strictly Iowan then and his commitment on issues does not come from books.

As minor episodes of racial violence struck Des Moines and Waterloo in the summer of 1967, Hughes suddenly and secretly visited the economically-depressed ghetto areas of Iowa's cities. Just as four years earlier he had immersed himself in problems of men behind state penitentiary walls, now he went through the invisible walls of much larger prisons.

"I was humbled and I was ashamed by suddenly realizing my own ignorance," he soon publicly admitted. "For a lifetime I have lived in this state and never believed that these conditions exist. And, frankly, I have to confess that if I had cared enough, I would have looked. I found that I didn't know my state as I should. I was physically and spiritually ill. People had poured out to me their bitterness and their loss of hope. Reassessing morally my own position, I found myself bearing the guilt."

The awakened governor responded quickly, persuading key business leaders in several of the cities to set up emergency employment programs for ghetto youth. He followed through in the fall by meeting with Iowa religious leaders, then summoned lay and religious leaders in six principal cities to "convocations on crisis."

Hughes's personal and emotional confession stirred his listeners and led to creation of civic task forces and new privately-financed employment programs. Jobs were provided for 1,200 youths in the summer of 1968. It was a fascinating example of Hughes's persuasive powers which, on a person-to-person level, have a mesmerizing quality.

Watching him eloquently and powerfully lecture those businessmen about racism, one could sense that the 1958 "porpoise in the fishbowl" had burst free. The original, elemental qualities still produced the commanding leadership, but they now were refined, broadened, and under firm, confident self-control. Once Hughes feels a problem, as one observer puts it, he exhibits "a combination of political pragmatism and social conscience" in finding solutions.

The social conscience flows out of deep religious feelings—from a lifelong Methodist who says "religion has been the motivating force in my life." It helped him quit drinking and to decide "that if God has a purpose for me I would try to follow it. I had messed up my life. Religion has taught me to love people, to be patient when I'm an impatient man, to respect the views of others whom I disagree with, to do good to others where harm has been intended to me."

Hughes describes his religion philosophically, too, and in various terms. He is to some extent a mystic, and he sees no reason why his innermost religious thoughts and beliefs should be subjected to minute public examination. Still, a messianic type of religious drive is very much a part of his nature and it has grown in recent years. Expressing his philosophy in a favorite proverb, Hughes says: "There is no solution; seek it lovingly."

In the tumultuous national politics of 1968, Hughes again seemed uncertain of direction. The logical political step was toward the Senate seat opened up by the retirement of elderly Republican Bourke Hickenlooper. For a brief period Hughes seemed plagued by doubts that he could or even wanted to cope with the more complex political atmosphere of Washington and the endless detail of the legislative process. Outdoorsman and hunter Hughes had little taste for what he imagined as the Georgetown drawing-room life of official Washington. And after experiencing power, prestige, and leadership opportunity as captain of a state ship, he wondered whether "one man in 100 can have any effect."

The doubts were resolved by Senator

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Robert F. Kennedy who appealed personally to Hughes to make the race. "He convinced me that one more man down here was important," recalls Hughes. "The importance he placed on the elements of humanity, peace, and the value of the individual all affected me." On this very basic and emotional level, Kennedy touched a responsive chord and Hughes plunged into the new politics of 1968.

War in Vietnam was the overwhelming issue and it found Hughes wrestling in the throes of a new transformation.

"Until 1968 I couldn't even talk to him about Vietnam because he was such a strong hawk and I was a strong dove," recalls a fellow Iowa state official. "But Park Rinard and I predicted the change would eventually happen, because of his compassion. Harold Hughes just can't stand human suffering."

The change was a long time coming, however. The Harold Hughes of 1965 was troubled most by the new anti-war protest and was concerned how he personally could support his President and friend Lyndon Johnson. At his suggestion, the White House arranged a Vietnam trip for a group of governors scheduled to attend a conference in Japan.

"I thought of it as a way to build support for the Administration," says Hughes of the 1965 trip. And Hughes was as misled about the war as his "brainwashed" fellow governor and traveler Romney. "They showed us all the right things and I came back even more convinced that we were right," recalls Hughes. Attempting to convince his anti-war Iowa advisers, Hughes proudly lectured on how well the war was going, pointing out on the map all the villages that were being pacified.

His first misgivings developed a year later in November, 1966, after Democratic candidates around the country had taken a sound drubbing from a Republican party prematurely pronounced dead only two years earlier. Democratic woes had been compounded by a whirlwind presidential pre-election trip to Vietnam which LBJ had planned to follow up with dramatic last-minute appearances on the political stump. Suddenly, Lyndon Johnson cancelled his political schedule and claimed it never had existed, thereby giving credence to public worry about a "credibility gap" and a growing war.

Stung by their party's losses in the governorship and Congressional elections, the Democratic governors headed for the plush old Greenbriar Hotel at White Sulphur Springs, West Virginia, to lick their wounds. Just before he left, Hughes stopped off at the White House intending to express his personal concerns to the President and to warn him of growing disarray in the party. He never said a word. After listening to a rambling, angry one-hour monologue from the President, Hughes left the White House shaken, fearing the President had lost touch with reality.

On the next evening, the Democratic Governors engaged in a four-hour-long gripe session which covered topics ranging from Vietnam to the President's politically unfortunate exhibition of his gall bladder operation scar.

Scattering to avoid waiting reporters, the governors left conference-chairman Hughes behind to tell about the meeting. Iowans were not surprised at the blunt way Hughes told the reporters that President Johnson had lost the affection of his party's governors, but such candor was rare in party politics and Hughes received national attention as a refreshing new voice. The next day was a personal nightmare as most of the governors refused to support Hughes's accurate portrayal of their complaints.

"I didn't want to tell him either," said Hughes, who always has recoiled at having to rebuke anyone for personal or professional failures. "Nobody wanted to tell him what was sticking in their gut. It's difficult to tell a hard man what people are saying about him."

Hughes had now told the President publicly and found that an injured LBJ

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bore lasting and vitriolic enmities. Ended was the friendship in which Harold Hughes had proudly seconded the President's 1964 nomination and had been praised as "that big tough governor" and honored with an overnight stay at the White House.

As his 1968 Senate race drew near, Hughes faced new pressure on the Vietnam issue from Joseph F. Rosenfield, a millionaire Iowa department store executive who served as his crucially important campaign finance chairman and his chief individual source of campaign funds. There are few millionaires in Iowa and less than a handful interested in financing Democratic political candidates. Rosenfield was passionately committed against the war and flatly told Hughes he would have to make a choice. "Joe said that if I didn't change on the war, he would still contribute but he wouldn't run my campaigns anymore," acknowledges Hughes.

Privately, Hughes concurred that the war was wrong but he felt it would betray the fighting men to say so publicly. Rosenfield and other dove supporters persisted. Finally, Hughes began to disassociate himself from the Johnson Administration's Vietnam policy, but he did so only in slow, cautious stages, testing whether the political climate in Iowa was ripe for bolder anti-war pronouncements.

War, he says now, "is useless as a political instrument. I hate war, all war. Humanity itself is at stake." The transformation is complete.

Lyndon Johnson's withdrawal from the presidential race posed new political problems and Hughes responded by playing it cool. "I was trying to keep my state from blowing up under me," he explains of the situation in which Iowa Democrats were fiercely divided among Humphrey, Kennedy, and McCarthy. Eventually, Hughes would have come out for Kennedy, but after the assassination he tried hard to move to his old friend Hubert Humphrey. Suspicious of the so-called "new politics," Hughes wanted to stay in the mainstream of the divided Democratic party.

"I waited and waited for Hubert to announce that he was off the damn war, but he never did," recalls Hughes. "When I talked with him I found out that he was an irretrievable hawk—worse than LBJ."

At the same time, Rosenfield negotiated with the eagerly hovering McCarthy forces, suggesting that, if they wanted Hughes's support, perhaps they would like him to make the nominating speech. Rosenfield followed the standard maxim of the Hughes team: if Hughes gets involved in an issue, he's best off going all the way. Whatever the political liabilities of a McCarthy endorsement, they would at least be partially offset by Iowans' reflected pride in seeing their governor make the nominating speech.

An insider recalls Hughes and his top advisers discussing what effect an endorsement of McCarthy would have. They felt it was vitally important for Hughes to maintain his image of decisiveness and strong leadership and that this image was slipping badly as the convention drew near with Hughes still undecided.

Hughes insists today that his decision and his nominating speech hurt him in his Iowa Senate race. "I thought at the time it would hurt me. I knew I was in a tough race and I thought this would be a crowning blow." Asked why he would take such an unconventional political risk, he responds that "politics is not conventional anymore. It has become a life and death matter."

Hughes played another important role at the convention—persuading the delegates to create a party reform commission to democratize procedures for choosing future convention delegates. The old guard fought the move, and its success further strained Hughes's relationship with Humphrey and the party chief, Oklahoma Senator Fred Harris. But as vice-chairman (Senator George McGovern of South Dakota is commission chairman) Hughes seems convinced now that the party leaders are committed to accepting the com-

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mission's recommendations for reform. If they don't, Hughes predicts, 1972 will see the biggest contest over delegate seating in the history of political conventions.

From the Chicago convention, Hughes went home to wage his battle for the U. S. Senate. Overconfident, tired and ill for two weeks with the flu, and up against a tough opponent with limitless campaigning energy, he almost blew it. He edged Republican State Senator David Stanley, a lawyer, by the thin margin of 7,000 votes.

As a Senator Hughes has concentrated on relatively few issues—narcotics and alcoholism, and Vietnam. It is characteristic of Hughes that he gravitated toward one or two issues he feels strongly about rather than become immersed in a vast array of legislation. He led the unsuccessful fight against the Administration's new enforcement proposals on drugs and narcotics, protesting particularly that research and education on drugs would be placed in the hands of Attorney General John Mitchell instead of in the Department of Health, Education and Welfare. His protest sparked medical experts into organizing to kill or amend the legislation in the House.

As chairman of a special subcommittee on alcoholism and narcotics, he has held hearings in Washington and in several other cities, giving both his cause and himself some exposure. The hearings have brought out dramatically the need for more humane methods of treating alcoholics and drug users, but they are at least as interesting for what they show about Hughes. Time after time, he becomes emotionally involved with the former drinkers and addicts who come before him as witnesses, identifying once again with the sufferers and reliving his own past. He has introduced legislation that takes a health and education approach to preventing and treating drug abuse. He has castigated the Nixon Administration for opposing it, accusing it's officials of "relegating drug addicts to dying in the streets" and warning them that the bill will pass despite their opposition.

His views on the war now closely parallel those of the Senate's most outspoken "doves." He calls President Nixon's Vietnamization program "a semantic hoax" which will prolong American involvement in Asia.

Liberals outside Washington increasingly are turning to Hughes for new leadership. He was sought out last year by a group of liberal business and professional men from New York City who developed the Fund for New Priorities in America, with the objective of reducing the role of the military and shifting government spending to domestic problems. Some of the members see Hughes picking up the strands of the peace movement in 1972. They have encouraged him to speak out on Vietnam and have given him a platform.

As featured speaker at the organization's March, 1970, fund-raising rally in Madison Square Garden to raise money for incumbent Democratic Senators who stand for "peace and new priorities," Hughes brought roars of approval from the crowd of 15,000 with his declaration: "We are here to bury the false and shoddy propaganda that the peace movement in America is dead." He called for a total restructuring of national policies "to break cleanly and drastically with the past. . .not superficial change, but major surgery."

Eli Sagan, the coat manufacturer who is vice-chairman of the Fund for New Priorities, calls Hughes "the most morally committed man I've ever met in politics."

He goes on to picture Hughes as "both a moralist and a realist" and adds "you don't usually find that in one person." The New Yorkers see in Hughes the emotional commitment they felt was lacking in Eugene McCarthy and obviously are interested in him as a 1972 candidate. If Hughes started a serious drive for the nomination, he would have the poor man's usual handicap and the

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wealthy New Yorkers could be a starting base to raise campaign funds.

Is Harold Hughes growing fast enough both politically and in comprehension of national issues to be presidential timber in 1972? That question is asked repeatedly by potential supporters and by doubters. The skeptics say that Hughes has expressed comprehensive interest and knowledge on too few subjects. They point out also that his staff is too inexperienced in national government to help him rapidly fill in the gaps.

Hughes's Washington staff is his Iowa staff, transplanted to the East. Park Rinard has become his official instead of unofficial aide, and the rest of the staff came with Hughes from the governor's office in Des Moines. Hughes knows that it is a green staff in Washington terms, but says "they have the capacity to grow and will leave their mark on the Washington scene."

He has no expert on foreign affairs ("If I ever became a candidate for higher office I'd get one or become one myself."). He has no one who knows much about economics and there are gaps in other important areas of specialized knowledge. If his staff is inexperienced, its members are young, bright, and idealistic. As Hughes has grown politically, he has not handicapped himself by retaining inept cronies. His first campaign manager, a hard-drinking road contractor, was curtly dismissed after Hughes found out he was using the governor's office telephones to add weight to his calls to the state highway commission.

Aside from a few hunting and relaxing friends, Hughes's inner circle of trusted advisers has remained small, with Rinard and Rosenfield its only permanent members. Hughes and Rinard already seem so close that they are sometimes indistinguishable. "Park is a sounding board for me," Hughes says. "He has become a sort of conscience for me." Rinard also insists on personally writing all the speeches that shape the Senator's policies on public issues. Despite his phenomenal capabilities and energy, there are obvious limitations to what can be supplied by one key aide.

Far removed from the tradition of highly organized party politics, Hughes has always stood independently, a good posture for a liberal Democrat seeking election in a still-Republican state. He did not build the party machinery in Iowa and remained always a little suspicious of it. He has made good friends quickly in the Senate, but he still usually travels alone.

Harold Hughes is a man on a mission. He is running for President—not in the sense of an announced candidate or even as an active behind-the-scenes political maneuverer, but more in the manner of a man who feels some sort of distant calling and is getting ready. His inner feelings and his acute political senses tell him that the issues he is concentrating on are the vital ones in American society and ones on which a political future can be built. He knows the chance is remote that any call will come in 1972, and he is maintaining the low visibility that is sensible now. A staff member says that Hughes is available if the lightning strikes and acknowledges that he is moving toward a spot where the chances of lightning's striking are best.

Perhaps unconsciously, the Presidency was on his mind as Hughes walked with a sense of quiet exhilaration last November among the thousands of youths gathered at the Washington Monument to protest the war. He said that the peace movement is a living force which will again gain strength as there is new disenchantment with the war. And then he mused: "In 1972, these kids who are 18 now will be old enough to vote."

Most of the time, one accepts Hughes's explanation that he is simply working on the issues he believes in, with no conscious aim toward a new political future. But at that point, one has momentarily forgotten that Harold Hughes, the sensitive human being, is also very much the astute and shrewd politician. That subtle blend has been his success, and it will determine in large measure where he goes from here. ■

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The Faults of Fault Insurance

by Richard E. Stewart

In America today, a typical driver has a better than even chance of having an accident every three years; just about every driver will have an accident sometime. We are all prospective accident victims. Most of us are also premium payers. Automobile accident costs are everyone's concern.

Today some of the costs of automobile accidents are transferred from the victim to others and some of those costs are not transferred at all but are borne by the victim. Which accident victims get paid, and when and how much? Which victims do not get paid and why? Who pays, and how much?

Today some of the costs of automobile accidents are covered by insurance. This year New Yorkers will pay some $959 million for automobile liability insurance. To whom does it go, and when and why? For whose benefit are the people paying their $959 million insurance premiums?

Richard E. Stewart is the Superintendent of Insurance of the state of New York. This article is adapted by him from a report he, Aaron Trupin, Stanley Dorf, and Abraham Blech prepared for Governor Nelson Rockefeller.

The cornerstone of the present way of handling the personal injury and property damage costs of automobile accidents is fault law which, when combined with insurance against liability for fault, becomes what we will call the fault insurance system.

Fault law is a collection of rules for determining, as between individuals, who will bear the cost of an accident. The determinations are made on a case-by-case basis, with the cost being shifted from the individual on whom it fell only if some other individual can be shown to have been exclusively at fault. Fault law became the established law of traffic cases long before the automobile was invented, and simply because it was the law of traffic cases, it became the law of automobile traffic cases.

When motorists faced the risk of being held financially liable for automobile accidents, they sought to insure against that risk. Insurance companies began to offer an indemnity policy under which the company undertook to defend its policyholder against suits based on fault law, and further undertook, in the event fault was established, to pay the damages up to the policy lim-

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its. Liability insurance brought insurance to the rescue of the wrongdoer.

The anomaly of the fault insurance system is that it continues to make fault an issue in every accident case, while at the same time it shifts the consequences of fault from the blameworthy individual to a multitude of blameless premium payers.

When the fault insurance system does not pay, the loss remains where it first fell—on the victim. It can happen to an accident victim who was himself only slightly at fault. But it can also happen to a victim who was innocent of any blame for the accident: this is the case with the victim in an accident where no one's fault can be proved. It is part of the basic design of the fault system to leave some accident victims without any compensation.

The practice quite lives up to the theory. One out of every four people suffering bodily injury in an automobile accident in New York receives nothing from the fault insurance system.

The fault insurance system, in theory, transfers costs only after a case-by-case determination pursuant to complex legal rules. There are obvious limitations on how fast a complex determination can be made with any degree of competence, and any system that makes those determinations one at a time can handle only a certain number on a current basis. Accordingly, delay and susceptibility to overloading are inherent in the system.

And indeed, injured victims of automobile accidents face average delays in collecting under automobile liability insurance that are 10 times as long as the delays in collecting under collision, homeowners or burglary insurance and 40 times as long as delays under the average health insurance. The average delay in paying automobile personal-injury liability claims in New York is well over a year. A typical large claim waits longer than a typical small claim. While waiting, the victim usually gets nothing from the fault insurance system. The cases that go to trial, which involve the largest claims of all, encounter truly incredible delays—between four and five years in the largest counties in New York.

The corollary of the victim's delay in obtaining justice is the burden on the courts in dispensing it. Automobile litigation is a major cause of court congestion; of New York's 221,000 pending state civil court suits, about half arose from automobile accidents. It is highly questionable whether the automobile deserves its dominant share of the docket, whether so much of the energy and attention of the courts should be expended on this one activity.

A significant part of the dollar that passes through the fault insurance mechanism inevitably sticks to the mechanism, burdening consumers and short-changing victims.

First of all, insurance companies and agents use up 33 cents of the premium dollar. Then lawyers and claims investigators take 23 cents. Those 56 cents for operating costs out of every premium dollar come to $384 million a year in New York State alone.

Victims as a class get 44 cents, and in that sense the 44 cents could be considered "benefits" paid by the fault insurance system. But such a mechanistic standard of efficiency would be met even if all 44 cents, or the $302 million a year, went to one victim while the others got nothing. Obviously it is necessary to look at what the 44 cents are spent on. First, 8 cents of the 44 go to pay for economic losses that have already been reimbursed from another source—usually health or accident insurance carried by the victim. Of the remaining 36 cents, 21.5 cents go not for actual economic loss, but for "general damages" or "pain and suffering" which, in the typical case today, are simply by-products of the bargaining process of insurance adjustments.

That leaves just 14.5 cents out of the premium dollar as compensation for the net economic loss—the medical expenses

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and lost income unreimbursed by another source—of the accident victim: $100 million out of the $686 million which New Yorkers spend each year for automobile bodily-injury liability insurance.

Essentially the adjustment of claims is a bargaining process in which each of two antagonists tries to get an advantageous agreement out of the other.

About one per cent of automobile liability claims is decided by a court under circumstances which hardly permit accurate and uniform findings. The other 99 per cent of the claims are settled in a proliferation of forums outside the judiciary—typically in unrecorded, private sessions between a claimant or his attorney and an insurance adjuster. Part lottery and part bazaar, the fault insurance system is unreliable and unpredictable.

After the law of fault has determined whether one person should be held financially responsible for damage to someone else, the next question is how much is to be paid. Surely the plaintiff's economic loss. But why not something more? Why should not the court award the plaintiff something extra for enduring pain or disfigurement or inconvenience or loss of dignity, or to cover his legal fees, or just to teach the defendant a lesson? When this question first came up, and when it was resolved in a way that has endured from that day to our own, there were few accidents and no insurance or other socio-economic considerations before the court—just two individuals, one already adjudged guilty and the other hurt and adjudged innocent.

However, today the award for "pain and suffering" is no longer ancillary to the award for economic loss. In the typical case it is larger than the award for economic loss. This strange fact is not traceable to the case of terrible injury. It is the small case, the minor injury that receives proportionately the largest award for "pain and suffering."

For example, one study has revealed

Injured victims of automobile accidents face average delays in collecting under automobile liability insurance that are forty times as long as delays under health insurance.

that of accident victims with economic losses of under $1,000 one-third were significantly overpaid, receiving through the fault insurance at least one and one-half times their economic loss. But only 18 per cent of them were underpaid, receiving less than three-fourths of their economic loss.

By contrast, the same study found that of the victims with economic losses over $1,000, none was overpaid and all were underpaid. Not one received so much as three-fourths of his economic loss, and 71 per cent of them received less than one-quarter of his economic loss through the fault insurance system.

The reason is not far to seek. Under the fault insurance system every claim has a value just by virtue of its existence. It involves the certainty of administrative costs and uncertainty as to the date or amount of the eventual award.

In the typical small case, reducing administrative costs is worth more to the insurance company than prompt payment is to the claimant, so small claims are overpaid. But in the large case, prompt payment is worth more to the claimant than closing of the claim is to the company. So large claims are underpaid.

The delays and bargaining postures which the fault insurance system encourages favor the strong over the weak. A personal injury case often pits an injured individual against a multi-million dollar insurance company. Too often, especially where injuries are serious, the insurer can simply wait out the injured victim to obtain a more favorable settlement.

In general, the highly abstract stan-

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Automobile insurance is a major source of court congestion. Of New York's 221,000 pending civil suits, about half arose from automobile accidents.

dard of liability called "fault" and the indeterminate measures of damages called "general damages" or "pain and suffering" offer rich rewards to the claimant who will lie, the attorney who will inflame, the adjuster who will chisel, and the insurance company which will stall or intimidate.

At the heart of insurance underwriting and rating is the process of predicting which classes or categories of policyholders are likely to cause which future losses. With millions of drivers at the wheels of millions of cars; with these cars running into each other, into pedestrians, and into all manner of objects thousands of times a day; with the existence and amount of liability for a given accident unknown for long periods in a time of general inflation—it is no wonder that automobile insurers are unable to predict reliably which policyholder is how likely to have how costly an accident.

In the effort to control future losses, insurers tighten their underwriting. On the basis of whatever "objective characteristics" are in vogue at the time, an insurer faced with mounting losses will weed out "bad" risks by whatever methods are at hand—by refusal to write, by cancellation, by non-renewal, and by steep rate increases. Such behavior may be legal and may be quite rational to the insurer, but it can be devastating to the policyholder.

The failure of the fault insurance system to compensate victims adequately would be understandable if the insurance were cheap. The inefficiency of the system might be tolerable if only a few of the consumer's dollars went into it.

But automobile insurance is expensive. The average premium for the liability insurance whose purchase is required by New York law is now $125 a year. For some one-car families the necessary insurance can cost as much as $419 a year.

Furthermore, the price of automobile insurance under the fault insurance system has been going up, and the prospects are that it will continue to go up. All casualty insurance is a pass-through of costs, and automobile liability insurance is a pass-through of costs (*e.g.*, medical care, wages and car repair) which are rising fast. Moreover, automobile insurance under the fault insurance system is a most inefficient and inaccurate pass-through, adding almost six dollars of operating expenses and misapplied benefits to every dollar in net economic benefits.

The only prospect for the present system is more delays, higher premiums, and worse misallocations of resources.

Attempts to modernize the fault insurance system by tinkering with it, while leaving its essentials intact, are sure to be expensive and self-defeating.

The time has come to make a fresh start, to ask ourselves what we want an automobile accident reparations system to do, and then to get a system that will do it.

A system of handling automobile accident costs should have the following specific operating characteristics. It should compensate all victims; pay generous benefits; be efficient; have low premiums; pay benefits fast; help prevent accidents and reduce accident costs; and help the courts and other related institutions work well.

The barrier to reaching these goals is the basis of the present system—fault insurance. We have, therefore, proposed for New York State a radically different system which eliminates the concept of fault in the compensation of the victims

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of auto accidents. The proposed system would compensate all victims for all of their net economic loss.

An accident victim, whoever he is, whether he is a good or bad driver, whether he is irresponsible or just unlucky, would be able to recover for economic loss resulting from an automobile accident without having to prove the negligence or fault of somebody else. The present legal action for negligent operation of an automobile would be abolished.

The owner of a vehicle would be financially responsible for net economic loss resulting from personal injury or property damage to anyone or anything other than another vehicle and its occupants, arising from accidents in which his vehicle was involved. His responsibility would be fully covered by compulsory insurance. Occupants of a second car in an accident would be covered by the insurance on that car. And anyone injured by a vehicle—driver, passenger or pedestrian—would be equally entitled to make a claim for compensation from the insurance on that vehicle.

Once the compensation system has undertaken to pay the accident victim for his loss, there is no reason for the system to stop short of paying for all of his loss. There should be no qualitative distinction among kinds of economic loss, which is another way of saying that the scope of benefits should be unlimited. Similarly, there should be no limit on the amount of loss which is compensable.

Such a plan should meet the criterion of efficiency very well. It should get a larger share of the premium dollar through to where it is needed—both by reducing overhead expenses and by minimizing misapplication of benefits.

Overhead expenses should be reduced from the present 56 cents out of the personal injury premium dollar to about 43 cents. The reduction comes from reduced claims adjustment expenses only. In the long run, a simplified automobile insurance system should lead to greater efficiency elsewhere in the operations of insurers.

Automobile insurance adds about six dollars in operating expenses and misapplied benefits to every dollar in net economic benefits.

The misapplication of benefits would be reduced by making the compulsory automobile insurance secondary to other sources of compensation, and by eliminating payment for non-economic matters—"pain and suffering"—under the proposed compulsory coverage. The effect would be a coordination of benefits between automobile insurance and the other sources of medical and income loss indemnity, and a concentration of available reparations dollars on net economic loss. This saving would be about 29.5 cents out of the personal injury premium dollar.

Taken together, these increases in efficiency mean that, in place of the 14.5 cents out of the premium dollar the victim now gets as net economic benefits, he could expect some 57 cents. The efficiency savings would be available for increased benefits to victims for net economic loss or for reduced premiums to consumers.

The big economies under our proposal come from reducing costs and from foregoing redundant and non-economic payments. Part of these economies is devoted to increasing benefits to victims for net economic loss. Part is devoted to reducing premiums for consumers.

How much will premiums be reduced? Actuaries have estimated premium levels under the proposed plan for the compulsory coverages and have compared them with premium levels for compulsory insurance under the fault insurance system.

Taking compulsory personal-injury coverage and compulsory property-damage coverage together, the average premium under our proposal should be

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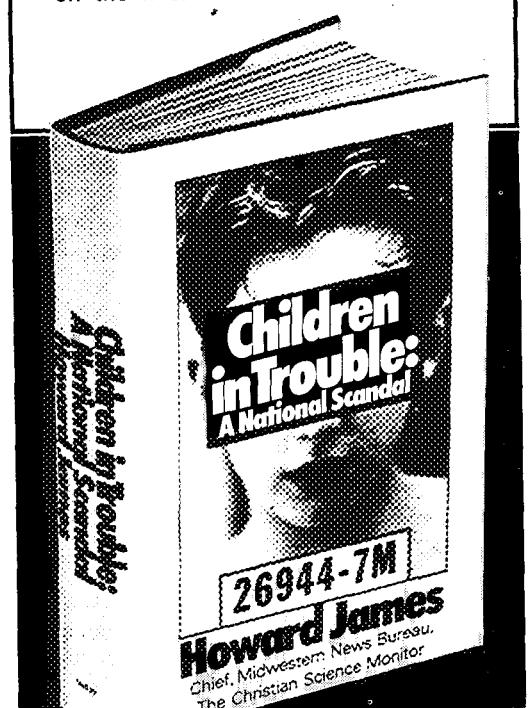
The author has been threatened for exposing information like this

New York: Family courts visited are among the filthiest in the nation.

Providence: Only 5 out of 186 children in a reform school visited have been legally committed.

Los Angeles: The author saw more than 200 youngsters sleeping on mats on the floor in a detention "home."



Over 300,000 children and young people are held in jails and detention and correction homes in the U.S. today. The Pulitzer Prize-winning author has traveled the entire country interviewing countless officials and social workers as well as many of the detained children. He reveals the unbelievable conditions and makes an urgent plea for action through legislation and education.

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about 56 per cent less than it is under the fault insurance system.

Much is written these days about the failure, assuming the intention, of modern institutions to let the individual participate meaningfully in the decisions that order his life. What we read prepares us to expect little of great institutions in the way of spontaneous regeneration, reorientation, or reform. It can only hint at the intransigence we may expect of the institution of interlocking powers which we call the fault insurance system.

But if that system is as far askew from the public interest as this study indicates; if that system is indeed being operated more for the benefit of its operators than for the benefit of victims, consumers, and society; and if the public once really comprehends what is going on—then even the enmeshed interests of those who operate the fault insurance system—insurance companies, insurance agents and negligence lawyers—will not be able to forestall change.

In any case, the alternative to prompt and fundamental change is hardly apt to be a vindicated status quo. If fundamental change in the fault insurance system does not come very soon, we predict that the entire apparatus will be swept away and replaced by a social insurance system run by government. Such a system could be created by either federal or state law and could be administered at either level and financed out of general revenues and would admirably meet nearly all the criteria for a good system. But it is far preferable that the reparations system be operated by competitive private enterprise, and that the public interest in automobile accident reparations be made secure within that framework.

The question up for decision is whether, in an important area of life, social justice can be achieved within a system of competitive free enterprise. It can be—but it is not certain to be. A lot depends on how quickly and how boldly we are willing to move while choices are still open. ■

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Memo of the Month

HUD-96 (7-66)
UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

TO : Stan Newman
Dave Einhorn

THRU Ross Boyle - Richard Langendorf

DATE: 2/19/70

In reply refer to:

FROM : Benjamin J. Taylor

SUBJECT: Continued Development of the CDAIS

We are currently funding and beginning work on a continued development effort in the CDA information system. Part of this effort concerns the development of a proto-type programming package. The current thinking is that the proto-type CDAIS should include four reports proto-type "packages" organized on a one year cycle starting with the previous year's CDP and ending with current year's modified CDP. The first unit of the systems would be a programming package that contains the administrative work program, the administrated work program, all project work programs and the plan part of all project program account and annual reports. This programming package would then become a key planning tool and would define the parameters against which the coming year's performance would be measured. The second unit would be an administrative report package, which would be the current package contained in the CDAIS with additional modifications as required. The third unit would be a project package which would include the current project and program accounts report modified to reflect the planning aspects of these reports. These planning aspects would be transferred to the programming package. The final unit would be an annual reports package which would compare the year's accomplishments to accomplishments predicted in the programming package and would relate project process attainment to project objective attainment to program objective attainment to problem solution, etc. In effect, it would effectively close the annual cycle and result in suggested modification of the current CDP.

I would appreciate any suggestion inputs that you may have to this effort and will keep you advised as to our findings and developments as they progress.

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Military Dictatorships: Why Rockefeller's Wrong

by Dan Gottlieb

President Nixon's pronouncements on Latin America have been so deferential to the other nations of the Inter-American system that they could offend no one, least of all the growing number of military regimes among them. In his speech on Western Hemisphere policy last October 31, the only clue he gave to his Administration's intentions toward the generals who now hold sway over more than half of Latin America's population was to say: "On the diplomatic level, we must deal realistically with governments in the Inter-American system as they are." What this statement certainly didn't say but evidently meant was revealed a few days later when the President said that Governor Nelson A. Rockefeller's report on Latin America would substantially shape the Administration's Inter-American policy and actions. The Rockefeller report strongly recommends extending U.S. economic aid and arms to military regimes.

This January, Assistant Secretary of State for Inter-American Affairs Charles A. Meyer said in an interview with United Press International: "The new military in Latin America are of a generation of men much more exposed to the development processes than before. I think there is a real conviction among them that they can get their countries moving.... I believe they are patriotic and nationalistic and there's nothing wrong with that." Meyer subsequently clarified his remarks to say that he was not praising military regimes but only describing the new military man and that he, of course, favored democratic rule. Since then, the Administration's policy has been to say as little as possible on the subject. But this year it has quietly resumed large-scale lending to Brazil, which had been suspended since the December, 1968, decree closing the congress, imposing press censorship, and cancelling the political rights of nearly 300 Brazilians. Furthermore, the Agency for International Development has scheduled nearly half of the Alliance's scarce funds this year for the Rio regime. This decision was taken despite continued tightening of repressive measures, withdrawal of earlier promises to begin to re-establish constitutional rule, and widespread reports by Brazilian clergymen, journalists, and lawyers of torture of political prisoners.

From these and other signs, the Administration appears to have advanced an important qualitative step toward accepting military regimes. Nine years ago, the United States solemnly committed itself in the Alliance for Progress charter to "accelerated economic progress and broader social justice within the framework of personal dignity and

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Dan Gottlieb is a Latin America and diplomatic affairs specialist for Reuters.

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political liberty." This was done not just in the name of democracy, but in the belief that it offered a better alternative, in the end, than communism and authoritarianism for bringing about high living standards and broad social justice. President Kennedy tried to stem the beginning of the tide of military coups by withholding aid and recognition from de facto governments. In the last Kennedy year and under President Johnson, the U.S. accepted coups as a temporary answer to political instability until constitutional rule could be re-established.

However, the Nixon Administration appears to regard military overthrows of constitutional governments not as a temporary evil, but rather as a long-term necessity, which is precisely how the new military leaders themselves see their role. The president of Brazil, General Garrastazu Medici, has said, for instance, that the "revolutionary" military regime "will last as long as is necessary for the implantation of the political, administrative, legal, social, and economic structures which can promote the integration of all Brazilians into a state of life that reaches at least the minimum level of well-being."

Governor Rockefeller seems to accept that Brazilian thesis. His report underestimates the capacity of civilian governments to handle the stresses of development. His thinking closely parallels that of the justifications traditionally given by the Latin American military for staging coups when he says:

> Few of these countries...have achieved the sufficiently advanced economic and social systems required to support a consistently democratic system. For many of these societies, therefore, the question is less one of democracy or a lack of it, than it is simply of orderly ways of getting along.

The Governor's repeated use of the word "order" as a *sine qua non* for progress, along with the concept that filling people's bellies is a prerequisite for democracy, show him to have a surprisingly authoritarian view of the dynamics of a developing society. That loud, even violent protest might be a necessary part of social change in a Latin context does not seem to cross his mind. Neither does the possibility that violence exercised in the name of order by military regimes (e.g., the Argentine regime's beating of students and professors in 1966, and its bloody suppression of worker-student demonstrations last year, which left at least 30 dead) chokes off nonviolent avenues of dissent.

One can point to constitutional regimes that have foundered or failed to deliver true representative government, but it is shocking to hear a man regarded as a liberal at home giving up so easily on the prospects for democracy that he can write, "The forces [of change] are so great that weak democratic governments haven't been able to exist...the only force that can develop stability is the military."

The only case he cites to support this thesis is the 1964 military takeover in Brazil, where there was runaway inflation, political indecision, and a dangerous drift to the left by a president-by-default. By implication, he lumps that case together with the subsequent coups in Argentina, Peru, Panama, and Bolivia. But in none of those countries were conditions chaotic prior to the coup. There was no popular demand for removal of the president. There was, to varying degrees, serious political division which made the adoption of strong measures for development and reform difficult. There also was in every case a fear by the *golpistas,* or organizers of the coups, of a probable election victory by a candidate or a party distrusted by the military. In Panama, the national guard threw out the popularly-elected president 11 days after his inauguration when he tried to assert control over appointments of commanders in the guard, which traditionally looked upon itself as the arbitrator of who could become president.

Democracy despite its imperfections is still proving itself a workable formula in many countries. Venezuela,

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Colombia, and Guatemala, which only recently emerged from decades of dictatorship, have experienced two or more successive constitutional changes of government, sometimes in the face of open terrorist attempts to impede elections. Chile, Costa Rica, Mexico, and Uruguay have continued to live by the tradition of the ballot in the face of the political strains imposed by development.

It is true, as the Governor points out, that the new military leaders have identified themselves with the Alliance's goals of reform and have spoken of the need to break down the domination of the oligarchy and foreign interests. But it is not yet clear whether any one of them has acted from ideological conviction, for the purpose of gaining quick popularity through anti-Americanism, or "partly in order to preserve a position for himself and his service or social group in the emerging power structure," as Ralph Dungan, former ambassador to Chile, suggested recently.

Beyond the importance of the value judgment involved in the militarism-versus-democracy debate is the practical question whether the military's monolithic power can be, in the long run, any more successful than democracy in bringing about the better economic and social bases that Rockefeller says are an essential precondition for permanent democracy in Latin America. Rockefeller says the new military "want to do a job for the people." Even Galo Plaza, Secretary General of the Organization of American States (who recommended to President Nixon that the Governor undertake the Latin America study mission), felt constrained to say in a speech subsequent to publication of the Rockefeller report, "How can a military government prove that it is 'of the people, by the people and for the people' unless it submits to the acid test of the ballot box?"

As a former President of Ecuador, a country privately viewed by some officials as "ungovernable," Plaza added, "I know from personal experience that it is hard to govern democratically, because the give and take of the political process sometimes makes for slower progress, but progress is more solid and more enduring."

The impression the new military tries to convey— that it can ram through controversial reforms that democracies cannot—has yet to be proven. For instance, the recent U.S. Agency for International Development report on land reform in Brazil said, "Laws have been enacted but implementation is hampered by the inertia of a bureaucracy beset by the enormity of this task, by vested interests, and by insufficient popular political support for an effective program."

According to *The Washington Post*'s Latin American correspondent, John Goshko, the generals in Peru have taken over private sugar estates, but the peasants continue to wait for land; they have expropriated Standard Oil Company's subsidiary, but assiduously sought new American investment; and they have adopted a "nationalistic" banking measure, the chief practical effect of which is to protect the oligarchic national banking interests from foreign competition.

However varied the political orientation of the new breed of military leaders, they all have used the traditional military responses to popular criticism: press censorship, jailing or exile of political figures, purges within the government, and breakup of anti-government demonstrations with force. Governor Rockefeller's assertion that "an illiterate, starving person is not very much interested in the form of government" is one shared by the majority of development experts, most of whom are economists rather than political scientists, and therefore have tended, until recently, to view development as the right choice of internal fiscal and investment policy, coupled with capital inflow, irrespective of popular support. They would do well to consider the counsel of the late Senator Robert F. Kennedy: "Justice and a sense of participation in the life of one's country are essential preconditions to any material progress."

Of course, Governor Rockefeller

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recognizes that providing aid and arms to military regimes has lost much of its acceptance in this country over the years. Thus one of his clinching arguments is that the U.S. must continue support to military regimes so that it can inspire them to restore democracy in their countries. This, of course, has been one of the major justifications of U.S. military assistance programs in Latin America since their inception during World War II. The record of nearly 50 coups since 1950, some of them led by graduates of U.S. training courses (which include indoctrination in democratic politics), suggests that the Latin American officer follows his own perception of his country's interests rather than those he learns here.

There are probably some instances in which it would be to the national interest to sell arms on a commercial basis to military regimes, since they can and do acquire them elsewhere. But there is no reason to believe that this helps the cause of political freedom. Nor is it necessary to maintain overstaffed military missions in Latin America. (From a peak of about 1,000 in the early 1960's, the Pentagon is now in the process of cutting back U.S. military advisers in Latin America to about 500. This has been due largely to Congressional and budgetary pressure. As an example of overstaffing, Senator Frank Church (D-Idaho) pointed out in hearings before his Western Hemisphere subcommittee of the Senate Foreign Relations Committee that the administrative costs of maintaining 22 U.S. military advisers in El Salvador in fiscal 1969 equalled or exceeded the $500,000 military aid program they were supervising.) As Ambassador Dungan noted, the presence of military missions has helped contribute to the militaristic image of the U.S.; and, from the Latin American military point of view, they have been tolerated by and large only in order to obtain arms cheaply from the U.S.

After arguing for maintaining close relations with military regimes by providing them aid and arms, Rockefeller, somewhat paradoxically, advocates finding ways to aid people without identifying with their military rulers. The President also has sounded the same theme in his Latin American policy pronouncements. When asked what this means, U.S. officials say that aid will emphasize people-oriented projects such as agriculture and education. Aid will still have to be channeled through the government, however, as virtually every project requires an accompanying local government investment and management.

The Nixon Administration also appears to be trying to circumvent the problem of identification with military regimes by a sudden burst of enthusiasm for channeling a greater proportion of U.S. aid through multilateral institutions. Although the professed intent is "Latinization" of aid programs, the United States would probably retain control of them as long as it provided the major share of multilaterally-run funds. At the Inter-American Bank, for instance, the U.S. representative holds an effective veto over low-interest loan decisions. The bank's use of high-interest ordinary capital loan funds depends on U.S. permission to sell bank bonds in our private capital market.

As laudable as President Nixon's initiatives in the field of trade and aid are in correcting some of the past excesses of U.S. paternalism and domination, they still do not provide an answer to what has been regarded as the central dilemma for U.S. policy posed by the political instability that the development process generates. As former Assistant Secretary of State for Inter-American Affairs Adolf Berle describes that dilemma:

> The policy of the U.S. should not—indeed cannot— be directed toward preventing revolution. Its real task is to promote social change, if possible, without violence, and to prevent revolution from being betrayed into the prehensile grip of the overseas imperialist Communist powers.

At the time this was written (at the outset of the 1960's) the threat of revolu-

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tion falling into "the prehensile grip of the overseas imperialist Communist powers" was uppermost in American minds. The main threat today is from the prehensile grip of the military. It is true, as the President said in his October 31st speech, that the U.S. cannot remake continents in its own image, and it is for each people to work out its political destiny. But somewhere between the fomenting of revolution and total withdrawal from Latin America, it should be possible for the U.S. to find a role that identifies it with forces for change and representative government without resorting to intervention.

The first requirement is abandonment of the myth of Pan-Americanism, which has been a basic U.S. concept since the launching of the "Good Neighbor" policy. President Nixon has said it is vital to maintain the "special relationship" with Latin America. In the past this has meant tying each and every American republic to the U.S. for arms, trade, investment, and aid. If the President means what he says when he called in his inaugural address for "an open world" then he should encourage the diversification of Latin America's ties with other regions. While there is no policy of discouraging this, Latin America has become accustomed to looking toward Washington for solution of its problems because of a readiness to provide answers.

The second requirement is for the U.S. to become more selective in whom it chooses for special relationships. A decision to concentrate bilateral assistance in countries with democratic regimes, or military regimes that demonstrate a broad measure of popular support and real intention to restore constitutional rule in a reasonable period of time, would be entirely consistent with U.S. commitments.

The U.S. is not, as Rockefeller claims, committed to helping all the peoples of the hemisphere to a better life. The Alliance charter pledges help to those countries which carry out self-help programs in accordance with democratic principles.

Where aid is on a truly multilateral basis, as in the case of the World Bank and the OAS technical assistance programs, military and other authoritarian governments could continue receiving assistance for viable development projects without involving identification of the United States. To those who threaten to turn to the Communists for support, the U.S. could say, in effect, "Go ahead. Let's hope you do better than Cuba!"

Rather than become alarmed over foreign economic penetration in this hemisphere, the U.S. should welcome it. If Japan, Western Europe, and even Eastern Europe can sell goods more cheaply or more suited to Latin America's needs and Latin America can sell more to them, the U.S. may merely lose some export business that is very expensive to maintain if one considers the cost of administering aid tied to U.S. exports. A prosperous Latin America, in the end, offers more promise as a customer of the United States than one artificially tied to it but with a slow rate of development.

A selective policy of U.S. aid and special displays of friendship does, of course, involve risks. But the risk of a second Cuba must be balanced against the risks of continued arrest of political development in Latin America. Keeping the lid on can only lead eventually to revolution or repression. The Soviet Union, with its own problems of investment for development and defense, shows no signs of wanting a second Cuba at this time. The first one is costing them about $400 million annually, according to U.S. estimates. In spite of overtures to Moscow and its satellites from a number of military regimes, the geographic distances and terms of trade have prevented any massive aid, commerce, or arms deals between Latin America and Eastern Europe. Of course, if the Soviets or any other major power seeks to establish military bases or ties in this hemisphere, U.S. policy should be flexible enough to respond; but there is no need

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to feel that the lack of a huge U.S. presence is an irresistible vacuum to Moscow or Peking, as Rockefeller implies.

Furthermore, the U.S. should seriously question whether its unilateral intervention is required if order begins to deteriorate in some corner of Latin America. To try to resolve another nation's internal conflicts free of violence may be to do it a disservice. In the Dominican Republic today, for instance, violence continues along with the same bitter political divisions five years after President Johnson sent in U.S. Marines. At the time, a Latin American diplomat may have forecast events in that sad country correctly when he told me, "All you are doing is storing up the hatreds." One wonders if a benign foreign power would have done the U.S. a service by intervening in its Civil War.

Finally, the U.S. must consider the moral risk of a policy aligning it with military rule in Latin America. It would be tragic indeed, after spending billions of dollars and thousands of American lives to uphold the right of self-determination in far-away Vietnam, to write off government by consent in Latin America, even temporarily. In the absence of a demonstrable threat to U.S. security in the hemisphere, in an era of negotiation rather than confrontation, there seems to be no compelling reason for basing our Inter-American policy on fear.

Furthermore, if the U.S. lacks the conviction to advocate and support—not proselytize or impose—democracy abroad, it will only be a matter of time before it loses its currency at home. As Charles Burton Marshall said in his book *The Limits of Foreign Policy* (written in 1953, long before the lesson of Vietnam):

> Whatever the case in earlier times, certainly under the interactive conditions of contemporary politics a world power cannot lead a double life. It cannot espouse one set of values at home and then cheat on them in the world at large....■

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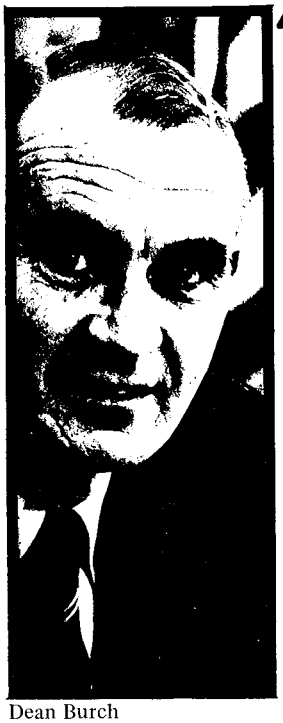
Dean Burch Watches Television



Dean Burch

Nicholas Johnson

by Elizabeth B. Drew

In the few months since the Nixon Administration installed Dean Burch as chairman of the Federal Communications Commission, communications policy, over which the FCC holds the controlling government power, has reached a state of perhaps unprecedented controversy. The Commission, which deals with one of the most sensitive areas of government regulation, has become the focal point of intense disputes over the structure, responsibilities, and freedom of the communications industry.

Under Burch's leadership, the FCC has already adopted a new policy which offers established broadcasters added protection against competition for their licenses. It is now facing major decisions about the ownership of the media. It has raised questions about what, in the name of anti-obscenity, it is seeking to keep off the air.

It has also, intentionally or not, become involved in uncomfortable questions about the political uses to which the Nixon Administration might be putting the power of the communications agency. The Nixon White House has not only installed a most politically minded man—a former chairman of the Republican National Committee—in the highly sensitive job of FCC chairman, but it has itself become involved in communications issues and intends to continue to do so.

Burch has said that he wants to shake the Commission from its lethargic ways and get on with long-needed policies to deal with the new developments in communications. But there are already indi-

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cations that the institutional torpor that has been the hallmark of the FCC might be too much for even the energies and ambitions of a Dean Burch.

In what has become something of a tradition for new FCC chairmen, Burch pledged in one of his first major speeches after taking office to clean up the agency's procedures and establish "clear and definite standards." He invited the Federal Communications Bar Association, composed of lawyers who deal regularly with the FCC, to join in the effort. A committee has now been established, made up of FCC staff and communications lawyers, the very groups that brought the procedures to their present state. "Those procedures put the lawyers' children through college," said one Washington communications lawyer. "I've been down this road so many times," said one FCC source. (Washington lawyers usually decline to have statements attributed to them; they say it interferes with the lawyer-client relationship.) "It's old hat," he said. "It's the old cry of the administrator saying 'please forget your clients and make my administration more effective.' Utter nonsense. I'm not skeptical about the committee. It's laughable. But it's an almost foreordained speech. I have news for Dean Burch: I'm going to try a case in a way that's best for my client and take advantage of every rule that's there."

One lawyer recalls that in Newton Minow's first major speech in 1961, famous for his charge that television is a "vast wasteland," the new chairman also pledged to press a study of networks "to a speedy conclusion with fruitful results." The study is still pending. "We are diddled and delayed by the industry," says Nicholas Johnson, the 35-year-old commissioner who has been a strong critic of his own agency, "and then the industry charges us with procrastination, and then we back off."

Chief Justice Warren Burger, presiding in his previous capacity as an appellate judge over a case involving the FCC, commented on the agency's "curious neutrality-in-favor-of-the-licensee." "The administrative conduct reflected in this record," wrote Burger, "is beyond repair."

What the broadcasting industry has not been able to accomplish at the FCC, it has often secured on Capitol Hill. There is a great deal that a local broadcaster can do for or to a politician, and a Congressman is perforce responsive to a broadcaster's requests. The FCC, no less than any bureaucracy, and more than a good many, in turn bows to the real and imagined demands of Congress. Congress often does not have to pass a law to get its point across. A warning from an appropriate Congressional committee, or even strong signs of displeasure from a powerful Representative or Senator have been often sufficient to affect FCC policy.

Richard Nixon's first two appointees to the FCC—Burch, former aide to Senator Barry Goldwater and chairman of the Republican National Committee during Goldwater's 1964 presidential campaign, and Robert Wells, a Kansas Republican and former general manager of a chain of radio stations—have already given the Commission a more political, and more conservative, style. Both replaced Republicans. The third Republican is Robert E. Lee, 57, a former accountant, FBI agent, and associate of the late Senator Joseph R. McCarthy.

In addition to Nicholas Johnson, Democratic commissioners include Kenneth Cox, Robert Bartley, and H. Rex Lee. Cox, who had served on Capitol Hill and in the Commission's broadcast bureau, is the most experienced and he is widely considered, even within industry, as the ablest of the commissioners. He generally believes that the FCC ought to exercise tighter regulation and frequently joins with Johnson in dissents. Bartley, 60, is a former employee of the FCC and the National Association of Broadcasters and nephew of the late House Speaker Sam Rayburn; Lee, 59, is a long-time government servant. When Democratic commissioner Cox's term expires June 30, the Administration will

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have an opportunity to secure a 4-3 Republican majority on the FCC, an opportunity it is unlikely to pass up.

Burch came on strong when he moved into his new job. He was the man out of the West, a tough, no-nonsense, take-charge kind of guy. He has worked hard to learn and is said to be willing to listen and discuss the issues. Even his opponents, and he has many, consider him a worthy one. He has established a distinctly different atmosphere than did his predecessor, Rosel Hyde. Hyde was an elderly conservative and career FCC bureaucrat, whose deference to colleagues and staff increased the agency's internal chaos and policy paralysis. Now the staff is more reined in, more reluctant to insert itself in the policy-making; in some parts there is an atmosphere of fear. While Hyde, a Mormon, was chairman, no smoking or drinking of coffee was permitted in the Commission's meeting room, and Commission meetings were aimless. The first signs that Burch had taken over were ashtrays and a gavel. After a few brisk months, now Burch's meetings have begun to wander. Yet the small talk and the debates have been cut down. If a colleague annoys Burch, he shows it. He has been known to wheel around in his chair and say such uncollegial things as "I'm sick and tired of your saying that," or "Oh, come off it."

Like as not, his target is Nicholas Johnson. Johnson, a former Supreme Court clerk and law professor, was previously administrator of the Federal Maritime Administration, where he asked a lot of uncomfortable questions and angered maritime interests until Lyndon Johnson (no relation) placed him on the FCC. Since then, he has been a strong critic of television, the communications industry, and the regulators.

"One of the fundamental differences between me and my colleagues," Johnson says, "is a difference in philosophy about the role of any agency like the FCC. Most of my colleagues take the position that we should be a responsive agency, principally reacting to the requests and pressures of outside parties. I believe we should do more initiating. They may take their position out of philosophical belief, out of political realism, or because they are not presented a meaningful balance to offset the inundation of material prepared and presented by the industry. It means that we don't initiate many inquiries of our own, that the staff seldom takes an adversary role in the proceedings, which are therefore dominated by the special interests. I'm not anti-business, I'm anti-special interest. I don't like to see AT&T or Comsat or the networks get what they want because they're powerful.

"It's not my position that the FCC ought to become a communications czar or that we know better what's in the public interest. It's my position simply that there are some things that government, or some entity, must do. The FCC ought to do a lot more than it has on initiating policy proposals for discussion—what are the options for our society on computer technology, cable television, the growth of mobile communications systems where everybody is carrying a telephone with him, the structure of commercial broadcasting, domestic satellites, and the rest of it. We don't do that, or we don't do it very well—with sufficient intellectual and economic independence. We don't have a communications policy."

Johnson, who recently published a book called *How to Talk Back to Your Television Set*, runs the only office in the FCC that could remotely be described as swinging. There are minis and maxis and enthusiastic, shoeless young assistants, and a radio playing rock music in the reception room. He has become stronger over the years in his criticism of the industry, and the industry has become angrier. "As a national tragedy," he says, "the failure of American television is equivalent in impact to the failure of our Vietnam policy—in terms of the number of dead, the national demoralization, and the squandering of national resources."

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Johnson does not often win the votes of a majority of his colleagues for his position. Yet his criticisms have forced the agency to examine important issues, such as concentration of ownership in the communications industry, that the Commission had preferred to avoid. Because he started with so little support and so few potential allies within the Commission, Johnson's route has been an outside one. His most effective weapons have been the written and spoken word, to audiences beyond the Commission's walls. His stinging dissents and strong speeches have, as he intended, aroused the interest of journalists, communications experts in the universities, and members of Congress. This has, in turn, brought increased attention to the FCC and pressure on his fellow commissioners and the FCC staff to move. And sometimes they have. Sometimes even in the direction Johnson wanted.

Burch is also using the opinion and speech routes to establish his own views, and to respond to Johnson. In a Commission meeting not long ago, Burch remarked with displeasure how often he had been seeing Johnson quoted. But, replied Johnson, in a reference to Burch's frequent appearances on the television panel shows, "I haven't been working as hard as the Chairman on Sunday afternoons."

"Nick," said a former FCC staff member who is now a private communications lawyer (as most of them are), "is effective in the sense that he's the one you keep your clients in line with. You never know where his opposition will affect the others. There is the knowledge that if you touch off a spring in him, you will have a tireless opponent, so you try to neutralize him. The one thing he is good at is getting the ear of people like you, and the other commissioners are aware of this and fear him. Burch is foolish to take him on because what he has to sell is more newsworthy, and you can't beat him at his game. But that's the limit of his effectiveness." Another communications lawyer is pleased that Burch is confronting Johnson. "There is no longer a vacuum in which one commissioner can make waves," he says. "It's been," he said, changing his metaphor, "like a small boy in the living room without a father around who sat and threw his toys."

Despite the clashes, there is at least a surface and somewhat determined atmosphere of camaraderie among the commissioners. Burch, the Arizonan, and Johnson, the Iowan, have many similarities; both are informal and relatively open, and both have streaks of prairie populism. "What do you think, Nick?" Burch will ask in the course of a press conference. "That was really beautiful," Johnson will tell him afterwards of his performance. Burch has given his colleagues ties—for the Republicans blue ones with orange elephants, for the Democrats red ones with yellow donkeys.

"I can agree with everything Nick Johnson says in the abstract," Burch says. "The question is how. Of course there should be better television. There should be better everything. The regulatory agencies were formed because it was too difficult for the Congress. The hell of it is there is no agreement on what the scope of regulation is. The FCC should be doing a lot of things it is doing. It's got to handle the renewals and transfers, it's got to allocate the frequencies. The question is what else should it be doing. We've got to get domestic satellites out of the paperwork stage. We've got to keep on top of the cable industry and see where it's going. Much of the FCC cable regulation in the past has been stultifying. When something has arrived, it's arrived. If it's ready, people should have it. There is a tendency to protect. That's true of any regulatory agency. It tends to be more comfortable with the past."

Burch and Johnson agree on much of this. But Burch, unlike Johnson, opposes standards for licenses: "We don't have the facilities to look at program performance. If we have a formula [for minimum standards] you have to meet or zap, you're dead, that's inherently unfair—because the fact that I have 26

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minutes of news may mean that I have a congenital idiot tearing it off the wire and another guy with five minutes of news spends $5,000 getting it. Figures don't tell you everything. People sitting down in Washington and writing standards for the entire United States doesn't work in the long run."

Since Burch took over the FCC, there has been a good bit of speculation as to whether he is, as some say, a "pragmatist" who happened into the Goldwater orbit, or a man of strong ideological views, a "Goldwater Republican." I decided to ask him. "That's kind of a stupid question," he replied, "because what is a Goldwater Republican? I'm not anybody's Republican. I'm not a right winger or a left winger. I'm just a guy who believes basically in as little government as possible. But when the government is responsible, the government has to act—defense, police, communications. If you want to put down am I an admirer of Barry Goldwater, yes—Barry Goldwater, the man, the real Barry Goldwater, not the shadow Goldwater that has been projected. You can say Burch abhors regulation and quite frankly I'm not just mad about regulating everything everybody does. But if it's an area for which we have responsibility, who the hell else will?"

Robert Wells, the other Nixon appointee to the FCC, came to Washington from Garden City, Kansas, with the backing of Kansas Republican Senator Robert Dole. But Wells's appointment to a job for which there were many candidates had more to do with the facts that he was from the right part of the country, in the right occupation, and of the right views about regulating broadcasting. It is unusual to appoint to a regulatory agency someone from the industry to be regulated, but the broadcasters have sought such an appointment for some time, and during the presidential campaign Nixon promised to make one. Wells thinks of himself as "a businessman," "a broadcaster," and a "moderate or conservative." "I probably am pretty set in my ways," he says. "My views on the broadcasting issues naturally are formed by the business I was in. I just don't know that you can separate the interests of the citizens and the interests of the broadcasters."

Before his appointment, Wells's views were sounded out by Peter M. Flanigan, a 46-year-old former investment banker and now a White House assistant who has had special responsibilities for the regulatory agencies and the appointments to them. The question of the proper relationship between the White House and the regulatory agencies has always been a delicate one, because of the nature of the business before the agencies and the jealousy of Congress. After the scandals

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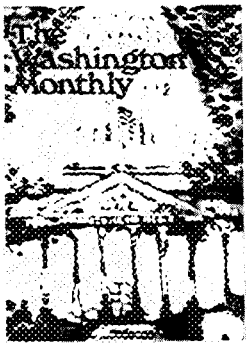

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during the Eisenhower Administration over *ex parte* contacts between businessmen and commissioners, in particular at the FCC, and the disgrace of Sherman Adams for his intercession with the regulatory agencies, it became a sort of article of faith that the White House should not deal with the agencies. The Nixon White House has concluded that the subsequent Democratic Administrations took excessive precautions.

"We think there was an overreaction," says Clay T. Whitehead, an assistant to Flanigan. Whitehead, a 31-year-old Ph.D. from MIT, where he taught electronics and political science, and a former employee of the RAND Corporation, has special responsibility for the FCC. "We're trying to get things back on even keel," he says. "We feel that in regulatory policy matters, too much has been made of the separation and independence of the regulatory agencies from the Executive Branch." Both Flanigan and Whitehead say that they will "rigorously avoid" an agency's regulatory, or quasi-judicial, functions, as distinct from its policy-making functions. Yet the distinction, they may find, is more textbook than real. A substantial amount of FCC policy is made through decisions on individual cases.

"In the past," says Flanigan, "there has been at least an appearance of interest in a case and we're constantly trying to avoid that. On the other hand, there has been a tendency to draw back from the agencies and avoid any exposure, but then you abdicate your responsibility. What is the proper regulation of mutual funds? I think that is a question the Administration should face. The agencies don't have to agree with our view of the policy. I think appointees to these commissions aren't that different from Cabinet officers. I recognize that they have a different relationship to Congress, but that doesn't mean they aren't part of the Administration."

In making appointments to the regulatory agencies, says Flanigan, "we chose people who are sympathetic to the general Nixon philosophy. I think it's clear Burch is and Nick Johnson isn't. Our philosophy is that we recognize that these industries are not subject to the full play of competition and therefore have to be regulated. On the other hand, to the extent that competitive factors can be made to work, we prefer that to regulation. We're not interested in regulation for regulation's sake."

Flanigan has taken all of the regulatory commissioners on a nighttime cruise of the Potomac, on the official yacht, the *Sequoia*, and the President has recently held meetings with each of the agencies. The White House recently established a new Office of Telecommunications Policy to deal with communications policy and with the government's own telecommunications activities. This replaces an existing office that was not doing the job.

The White House has already been involved in at least two major policy matters pending before the FCC. It asked the FCC to delay a planned announcement of policy on the disposition of various proposals to establish a domestic communications satellite system. Among the rivals are the networks, AT&T, public television interests, and Comsat, the part-government-part-private company established by Congress in 1962 to operate international communications satellites. Last summer, the Commission was prepared to suggest, in a sort of non-decision, that there be one multi-purpose pilot domestic system operated by Comsat, with its usage to be determined by the various claimants. The White House in January proposed instead that the domestic satellite business be opened to competition. The FCC in late March announced that it still was unable to decide the satellite issue and said it was "preferable" for the applicants to "take the initiative in submitting concrete system proposals." Burch said that it would be at least three more years before a satellite system was operating.

The second FCC issue in which the White House participated was the policy statement issued in January on competing applications for broadcast li-

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censes. In that instance, its role was not made public. The effect, in contrast to the satellite policy, was to discourage competition. The policy statement was the FCC's response to a bill introduced last year by Senator John O. Pastore (D-R.I.), chairman of the Senate Commerce Committee's communications subcommittee, and co-sponsored by a number of Senators and Congressmen. Pastore's move came after the FCC, in the first action of its kind, transferred the ownership of Boston television station WHDH to a group which challenged the renewal. There were a number of factors that were unique to the WHDH case, which had been pending before the FCC for 15 years. Nevertheless, the decision encouraged competing applications in other renewals and deeply disturbed broadcasters. Senator Pastore's bill would have prohibited the FCC from considering a competing application for a license at its renewal time unless the Commission had already found that the current owner had not been serving the public interest. Given the FCC's record, the effect would have been virtually to eliminate competing applications against established licenses. Johnson called the Pastore bill a measure to grant "licenses virtually in perpetuity." It was attacked by a number of citizen groups, including blacks interested in more participation in broadcasting, who called the bill "racist."

The opposition was greater than the bill's sponsors had expected. Pastore, therefore, expressed his pleasure when the FCC issued the policy statement, which negated the need for his bill. The new policy permits competing applications, but guarantees that a license will be renewed if the broadcaster has "substantially" met the needs of his community. "Substantial" was defined as "solid" or "strong," as opposed to "minimal." An important consideration, it said, is that FCC policy "must not undermine predictability and stability of broadcast operation." (Since the policy was adopted, the FCC has delayed the renewal of stations in Atlanta so that black groups could negotiate for more minority hiring and programming, and the community groups won several concessions from the stations.)

The policy statement was pushed through by Burch in what for the FCC was exceptional speed, and reflects his strong influence on the agency. He circulated a draft just before Christmas and notified his colleagues that he wanted to take it up after the holidays. The policy statement was issued January 15, and it was very close to Burch's original version. It was adopted by a 6-1 vote, with Johnson dissenting. Cox, who might have been expected to dissent, managed to make some changes in Burch's proposal and viewed the final version as the best that could be salvaged. He also saw it as at least a spur to broadcasters to improve service so as to avoid challenges. Before Burch and Wells were appointed, the FCC divided 6-1 against the Pastore bill. By the time the Commission, with its new members, testified before the Pastore subcommittee, it was only 4-3 against, with the three Republican commissioners favoring some new protection for broadcasters. Wells had announced his support of the Pastore bill before he was appointed.

The White House was in frequent contact with Burch about the FCC's policy statement. "Basically, it was his idea," says Clay Whitehead, "but it was a policy we supported. This was a case where the industry felt very threatened, and I think legitimately so. I think the public felt threatened by the Pastore bill. You can't insulate a broadcaster completely, but on the other hand this is an industry. People make investments."

"I wouldn't be surprised," says Burch, "if we fail to renew licenses. But if we revoke a license we can be fining a broadcaster $20 million. That's why I'm not anxious to take licenses away. Sure he got it for nothing, but someone has put his life in this job, and we'd be taking it away for something only theoretically better."

It has been estimated that television stations earn, on the average, 100 per

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cent on tangible investments. By any standard, television and radio are very profitable businesses. (The FCC, under pressure from Congress and the Bureau of the Budget, recently proposed to substantially raise broadcasting license fees to cover its own costs.) "The infinite potential of broadcasting to influence American life," wrote Warren Burger, "renders somewhat irrelevant the semantics of whether broadcasting is or is not to be described as a public utility. By whatever name or classification, broadcasters are temporary permittees—fiduciaries—of a great public resource, and they must meet the highest standards which are embraced in the public interest concept."

The strongest vibrations from the Burch appointment, however, have come less from any specific move by the FCC than from a number of actions on the part of the Nixon Administration which placed him in such a sensitive job. Some of the actions are well known by now, others are not. There were the events following President Nixon's November 3, 1969, address on Vietnam; Vice President Agnew's speeches attacking the press; the calls by Herb Klein, the Administration's Director of Communications, to ask broadcast stations what they planned to say in their editorials; the calls to television stations by a member of the Subversive Activities Control Board asking for the logs of coverage in support of and against the Administration's Vietnam policy; and Dean Burch's calls to the presidents of the networks asking for the transcripts of the comments on the President's speech.

Frank Shakespeare, a former CBS official and director of television during the President's 1968 campaign and now head of the United States Information Agency, suggested to the Radio and Television News Directors Association that since television "is rather clearly liberally oriented," its members might consider making a point of hiring conservatives. Shortly after Mr. Agnew's speech attacking the Washington Post Company's extensive communications holdings (the newspaper, *Newsweek* and several radio and television stations), a group of Republican businessmen including a business partner of Bebe Rebozo, the President's close friend, challenged the license renewal of a Post Company television station in Miami, Florida. There were the recent Justice Department subpoenas of reporters' notes and unused film.

There is usually a tendency to ascribe more organization and planning to events than they deserve, especially when they involve the government. "We're concerned when we feel that news hasn't been presented fairly," says Klein. "On the other hand, I'd be concerned if they construed anything I said as a threat. They know that. They'd be pretty insulted if we weren't aware of what they were doing."

Nevertheless, the collective impact of the Administration's rumblings has been felt in broadcasting's nervous system and, it is widely believed, in its content. "Agnew has released a lot of furies that are going to be very hard to live with," says Frank Stanton. "In this context of intimidation," Stanton said in a speech responding to Agnew, "self-serving disavowals of censorship, no matter how often repeated, are meaningless. Reprisals no less damaging to the media and no less dangerous to our fundamental freedoms than censorship are readily available to the government—economic, legal, and psychological."

"They have such wide options," says Richard Salant, president of CBS news. "They can always find a reason to give a license to a new group—it's more locally owned, it promised more agricultural broadcasts—they would never say it's because of criticism of the Administration, because of 'instant analysis.' "

The strongest impact of all of this, from most accounts, has been on the local stations. Burch issued a statement endorsing the Vice President's first speech on the media. The Vice President's comments, he said, "were

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thoughtful, provocative, and deserve careful consideration by the industry and the public." He has said since that he hoped there would be public pressure on stations to change, and the reports are that there has been a great deal of just that. Network officials and communications lawyers say that a great many local stations had been unhappy about the coverage of controversial events, such as the Democratic convention in Chicago, demonstrations, and the war. Now, they say, they are more inclined to limit their coverage to less disturbing news or entertainment. "It is self-censorship I am worried about," said one troubled FCC official. Not long ago, Burch said that reporters' notes are "sacred." Films, he indicated, were different.

The crucial point of all this is, as Burch and the White House are well aware, that the FCC need not regulate in order to influence what the broadcasters do. There are always enough matters pending before the agency to make broadcasters, even the powerful networks, reluctant to annoy it. Broadcasters are businessmen and, as one of their lawyers put it, "when the FCC coughs, they worry. They will cut the cloth to what they think it, particularly the chairman, wants."

Burch was widely reported to have regretted making the calls for the transcripts, but in an interview he said, "I don't think it was an unwise thing to do. It may have been impolitic. I'm not inclined to think anyone was chastened by it, and I don't want to have to go at everything in a triangle. I'll always get things done I want, but I may change my ways. If I want a transcript, I'll get a transcript."

Often an FCC chairman will establish his own issue, one that puts him in the news and creates his own following. Whatever the limits on what he can do about it within the agency, his speeches, he knows, will reach the broadcasters, and, because he is who he is, they will respond. Former Chairman Minow's issue was the improvement of television. Burch's is obscenity. It is, he has said, his own kind of anti-pollution campaign: "I think there is a lesson to be learned from our present environmental problems—an early preventive program is the best cure. And while obscene and indecent programming is not a burning issue now, there are more than enough straws in the wind to warrant our attention." Burch has made the necessary disclaimers that he does not "intend in any way to intrude the Commission in matters of taste," nor does he "intend in any way to suggest that we inhibit the presentation of provocative, controversial programming."

The fact is, however, that it is small stations willing to deal with the more controversial issues, broadcast the newest in the arts, and ones that have put such groups as the Panthers on the air, which have received the scrutiny—"harrassment," one staff member believes—of the Federal Communications Commission.

In the past, these stations have been warned, and their renewals have been delayed, but the FCC generally declined to punish them. In its last major policy statement on the matter, the FCC in 1964 renewed the licenses of some nonprofit, listener-supported stations operated by the Pacifica Foundation despite complaints about broadcasts that included Lawrence Ferlinghetti reading his poems, a recording of Edward Albee's "The Zoo Story," and a discussion by homosexuals about their attitudes and problems. The Commission held that it was not concerned with a few isolated cases, nor with "matters within the licensee's judgment." "We recognize," it said, "that as shown by the complaints here, such provocative programming as here involved may offend some listeners. But this does not mean that those offended have the right, through the Commission's licensing power, to rule such programming off the airwaves. Were this the case, only the wholly inoffensive, the bland, could gain access to the radio microphone or TV camera."

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It is almost impossible to regulate obscenity, as the courts have found, and the FCC has no guidelines for stations to follow. At one point, Burch tried to have drawn up a list of words that would henceforth be forbidden over the airwaves, but gave that up. He has said that it was "the most obscene document probably that has ever been put together by a government agency." The FCC is quite at a loss to know what to do about the lyrics of some of the current rock songs. There is probably no way to keep language which some might consider offensive off the air except by not putting on any group that might use it, or insisting that everything be taped ahead of time.

What Burch seems to have in mind is to make his point, often, and try to stimulate citizen pressure and industry self-regulation. "You can help," he said in a speech to the Big Brothers of the San Francisco Bay Area, "by letting the broadcasters know you care—by letting them know that you care enough to complain to the Federal Communications Commission if a station abuses its programming responsibilities." And, in a signal to other stations as well as the public, the FCC recently punished a small, listener-supported station (KRAB-FM in Seattle) because, in the course of one program which played an "autobiographical novel for tape" by a black minister, some four-letter words were used. The station's license was renewed for only one year, instead of three. According to the station, it had not pre-auditioned the entire tape, and when the manager heard the words, which violated the station's own policy, he terminated the program midway. Although the Commission did not find a violation of the FCC rules, it nevertheless punished the station for lax enforcement of its own rules. Cox and Johnson dissented. Cox pointed out that the Commission did not even have a tape or transcript of the program, and therefore did not know the context in which the words were used. "The imposition of a sanction for one departure," he wrote, "is not only without precedent, and in my judgment highly arbitrary, but is also likely to exert a chilling effect on licensees' freedom in programming." He accused the Commission majority of applying "a double standard," imposing sanctions on "non-commercial stations which broadcast very substantial cultural and informational services," but not even considering the far more numerous complaints against some network shows. He also criticized the networks and the National Association of Broadcasters for not extending their frequently expressed concern for their own First Amendment rights to the fate of smaller and less powerful stations.

Here, too, the impact of Burch on his colleagues is clear. Two commissioners, Bartley and H. Rex Lee, had voted for full renewals despite similar complaints in the past, but have now switched. Last year, the FCC granted a permit to Pacifica to build a station in Houston over protests that it should not be done because another Pacifica station had broadcast a poem depicting Jesus in sexual acts. The context of the reading of the poem was a discussion of a widely reported local controversy over whether two teachers should have been fired for teaching the poem to college English classes. The program was broadcast late in the evening, and there was a prior announcement that because the poem would be read and it might be offensive, the listeners might want to turn off the radio. Burch says he "would not have condoned" that program, that the FCC's permit to Pacifica was "a poor exercise in judgment."

"What Burch doesn't understand," says one FCC source, "is that this is the First Amendment. It will lead to a damping down of debate. If stations see that they will get in trouble for putting on the controversial, they won't put on the controversial, whether the commissioners mean that to happen or not."

More recently the Commission fined an educational FM station in Philadelphia because four-letter words were used in an interview with the leader of a rock group. This was the first time a

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broadcaster was fined for obscenity and it was a deliberately constructed test case. In developing it, the FCC worked closely with Nixon officials at the Department of Justice. It is an issue that is consistent with the politics of the Nixon Administration. "It's a tangent," says E. William Henry, chairman of the FCC from 1963 to 1966. "It's political, and it's easy—it's so easy. There are a lot of other more important questions before the FCC."

One of the most controversial questions, and one on which the Commission has been deeply divided, is what to do about the growing concentration in the ownership of media. Increasingly, television stations and newspapers are becoming part of large chains or of corporate conglomerates. In many cities, a single firm with interests in newspapers, radio, and television dominates the community's communications. Commissioner Nicholas Johnson, among others, has warned that this is producing a worrisome shrinkage in "the marketplace of ideas." Until recently, however, the FCC was not very interested, and it approved a number of controversial mergers. Later, it decided to inquire into the problem. It voted, 4-3, to send a detailed questionnaire to six conglomerates. The four Democrats were in favor; the three Republicans, including Burch, were opposed. The companies have resisted answering the inquiries; if and when Kenneth Cox, whose term expires at the end of June, is replaced by a Republican, they may be relieved of the burden.

The Commission recently adopted a rule that would limit, in the future, any owner to one full-time broadcasting facility in a community. The rule does not require divestiture of any existing facilities, but would apply only in the cases of application for approval to acquire new ones or of sale to a different owner. Therefore, this would have little effect on existing large concentrations, because such groups rarely sell their broadcast properties, or on conglomerates and chains which are not concentrated in one community. The four Democrats were in favor of the rule; two of the Republicans were opposed. Burch was both for and against it; he said he preferred study of this question in the larger context.

At the same time, the Commission proposed a far more important and controversial rule that would extend the "one-to-a-market" concept to cover newspapers as well as broadcasting, and would also require divestiture of excessive interests. The proposing of the rule does not necessarily mean that the FCC itself will adopt it. This is an issue that will be fought over within the Commission and in Congress for some years. During that time, the opposition will be strong, and persistent, and there will have been several new Nixon appointments to the Commission.

Media concentration is an issue in which the White House might want to participate. Many people in and out of the Administration contend that broadcasting stations owned by newspaper companies usually provide better service than those owned by businessmen with no background in journalism. Herb Klein has spoken out against proposals to limit the number of newspaper and broadcast properties that can be owned by any one company and to split newspaper and broadcast ownership. A White House aide explains that although Spiro Agnew expressed concern about concentrations of media ownership (albeit his examples were limited to The Washington Post Company and The New York Times), he was not suggesting that they be broken up, just that they be "objective."

There are a number of other complicated and long-pending decisions that the Commission still has to make about cable television, network structure, how to effectively regulate AT&T, and how much competition to AT&T to encourage, particularly in the growing field of data transmission. The FCC has been studying what to do about the prolifera-

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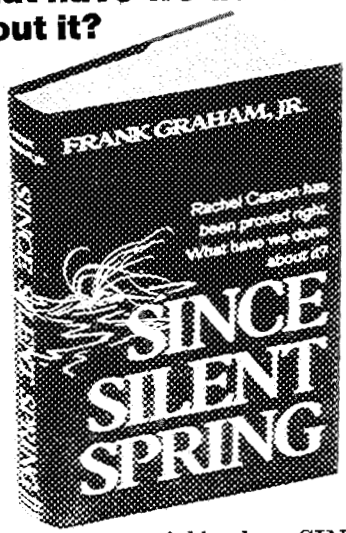

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tion of communication by computer for over three years; the Commission has pending a tentative decision to avoid extensive regulation, and is now waiting to see if this is agreeable to the industries involved.

Almost no one who has looked closely thinks that the FCC is up to all this. A number of people have studied the agency and then suggested that it be junked. A special commission appointed by President Johnson, and others, have suggested that there be established some other executive agency to deal with communications policy. This would leave the FCC with the duty of granting broadcasting licenses. Some do not think it is up to even that, and that it would be more sensible just to auction off the licenses. Almost everyone agrees that the agency needs more money and better staff. Most agree that seven commissioners are too many. Newton Minow, former chairman, said seven was six too many. Clearly its procedures and deliberations ought to be opened up more to the public, on whose behalf it is presumably acting.

Certainly a great deal depends upon the appointments that are made to the FCC. The next one, due at the end of June, is crucial because of the close division within the agency on key issues. The Administration, in its first two choices, has signaled to the broadcasting industry that it need not be alarmed. Agnewism notwithstanding, there has been scant indication that the Nixon Administration intends to upset the communications industry's status quo.

The White House's concern with broad communications policy, to the extent it is known about, is generally welcomed. Most observers think that there is a proper White House role on this sort of thing, up to a point. But this is very difficult territory, one the White House may come to wish it had avoided. It may be that it does not yet realize how controversial, subtle, political, and even dangerous interference with the regulation of communications can be. Then again, it may be that it does. ■

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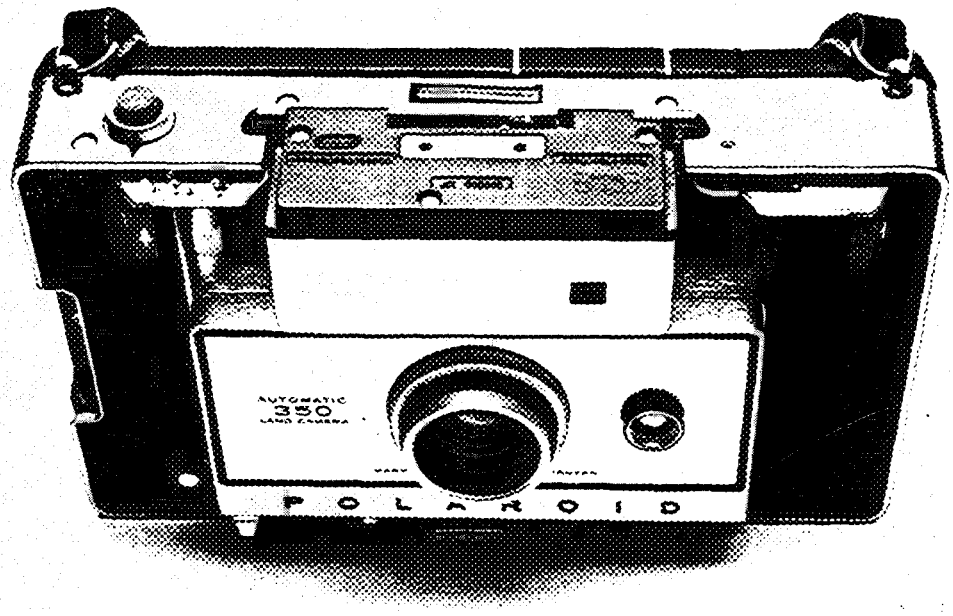

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